

United States
Circuit Court of Appeals
For the Ninth Circuit.

KANAME FUJINO,

Appellant,

vs.

TOM C. CLARK, Attorney General of the United
States,

Appellee.

Transcript of Record
In Two Volumes
VOLUME I
Pages 1 to 264

Upon Appeal from the District Court of the United States
for the Territory of Hawaii

FILED

APR 7 1948

PAUL P. O'BRIEN,
CLERK

No. 11786

United States
Circuit Court of Appeals
For the Ninth Circuit.

KANAME FUJINO,

Appellant,

vs.

TOM C. CLARK, Attorney General of the United
States,

Appellee.

Transcript of Record
In Two Volumes
VOLUME I
Pages 1 to 264

Upon Appeal from the District Court of the United States
for the Territory of Hawaii

INDEX

[Clerk's Note: When deemed likely to be of an important nature, errors or doubtful matters appearing in the original certified record are printed literally in *italic*; and, likewise, cancelled matter appearing in the original certified record is printed and cancelled herein accordingly. When possible, an omission from the text is indicated by printing in *italic* the two words between which the omission seems to occur.]

	PAGE
Affidavit of Sureties	447
Answer	25
Exhibit D—Power of Attorney	32
B—Transfer of Deed	36
Appeal:	
Bond on	446
Certificate of Clerk to Transcript of Rec-	
ord on	448
Designation of Record on.....	445
Notice of	444
Order Enlarging Time to Docket Record	
on	448
Statement of Points on.....	532
Appearance	444
Bond on Appeal	446
Certificate of Clerk (DC) to Transcript of Rec-	
ord on Appeal	448
Clerk's Statement	2
Complaint	4
Exhibit A—Real Property Owned by Yo-	
taro Fujino.....	18
Return on Service of Writ.....	24
Summons	23

INDEX	PAGE
Decision	49
Conclusions of Law	58
Findings of Fact	50
Designation of Record on Appeal.....	445
Exhibits, Defendant's:	
No. 4—Transfer of Business in Exchange for Stock	449
5-A—Letter 2/19/41 to Oahu Junk Co...	455
7-A—Letter 6/30/41 to Oahu Junk Co...	457
8-A—Note 3/23/41	458
9—Second Page of Letter Dated 3/24/41	458
Exhibits, Plaintiff's:	
A—Power of Attorney, Acknowledgment by R. K. Murakami	459
B—Power of Attorney, Acknowledgment by Maltbie L. Holt	462
C—Power of Attorney, of Chiyono Fujino.	465
D—Articles of Association	468
E—Power of Attorney, Acknowledgment by C. H. Stephan.....	479
F—Power of Attorney, Acknowledgment by D. Thomasson	483
G—Mortgage, 3/13/41	488
H—Deed	501
I—Power of Attorney, Acknowledgment by D. Thomasson	509

INDEX

PAGE

Exhibits, Plaintiff's—(Continued):	445
J—Document No. 528; Certifying Kaname's Fujino Was Expatriated 1/19/39 from Japanese Nationality	513
K—Promissory Note, 3/13/41	514
L-1—Letter Dated 1/16/41 to Oahu Junk Co.	515
M-1—Letter Dated 2/20/41 to Oahu Junk Co.	518
N—Gift Tax Return, 1941.....	519
N-1—Check to C.I.R., \$779.63, Dated 3/16/42	523
O—Radiogram Dated 9/22/41	525
P—Minutes of Meeting of Board of Directors, 6/8/42	526
Q—Radiogram Dated 3/21/41	527
R—Radiogram Dated 3/24/41	528
S—Transfer of Deed	528
Judgment	60
Minutes of the Court:	
Fri., Nov. 8, 1946—Further Trial.....	442
Fri., Nov. 15, 1946—Further Trial.....	443
Thurs., Oct. 31, 1946—Trial	436
Thurs., Nov. 7, 1946—Further Trial.....	440
Wed., Nov. 6, 1946—Further Trial.....	439
Names and Addresses of Attorneys of Record.	1
Notice of Appeal to Circuit Court of Appeals Under Rule 73(b)	444
Order Enlarging Time to Docket Record on Appeal	448

	INDEX	PAGE
Reply		44
Statement of Points		532
Transcript of Proceedings		63, 413
Witnesses for Plaintiff:		
Fujino, Kaname		
—direct		142, 165
—cross		171, 393, 428
—redirect		217, 234, 249
—recross		237, 253
Murakami, Robert Kiyochi		
—direct		69, 335, 339, 354
—cross		101, 338, 341, 358
—redirect		137, 349
—recross		349
Tsuda, Tokuichi		
—direct		256
—cross		280, 303, 391
—redirect		325, 392
—recross		334, 393
Tsutsumi, Harry Yasuo		
—by the court		365
—direct		365
—cross		375
—redirect		385
Yamamoto, Mrs. Maiyo		
—direct		396
—cross		400
—redirect		405

NAMES AND ADDRESSES OF ATTORNEYS
OF RECORD

For the Plaintiff:

GARNER ANTHONY, ESQ., of the firm
ROBERTSON, CASTLE & ANTHONY,
312 Castle & Cooke Building,
Honolulu, T. H.

For the Defendant:

RAY J. O'BRIEN, ESQ.,
United States District Attorney,
District of Hawaii,
Honolulu, T. H.

GEORGE W. JANSEN, ESQ.,
Chief Trial Attorney,
Department of Justice,
Washington, D. C. [1*]

In the United States District Court for the
District of Hawaii

Civil No. 704

KANAME FUJINO,

Plaintiff,

vs.

TOM C. CLARK, Attorney General of the United
States, as successor to the Alien Property
Custodian,

Defendant.

CLERK'S STATEMENT

Time of Commencing Suit:

February 13, 1946, Complaint filed.

Names of Original Parties:

Kaname Fujino, Plaintiff.

James E. Markham as Alien Property Custodian, Defendant.

Dates of Filing Pleadings:

February 13, 1946, Complaint and Summons.

April 15, 1946, Answer.

May 6, 1946, Reply.

April 22, 1947, Decision.

June 5, 1947, Judgment.

Times When Proceedings Were Had:

October 31, 1946, Trial.

November 6, 1946, Further trial.

November 7, 1946, Further trial.

November 8, 1946, Further trial.

November 15, 1946, Further trial.

Proceedings in the above entitled matter were
had before the Honorable J. Frank McLaughlin,

Judge, United States District Court, District of Hawaii. [2]

Dates of Filing Appeal Documents:

August 30, 1947, Appearance (Attorney on Appeal).

Notice of Appeal to Circuit Court of Appeals under Rule 73(b).

October 2, 1947, Designation of Record on Appeal.

Bond on Appeal.

Order Enlarging Time to Docket Record on Appeal.

Certificate of Clerk to the Above Statement

United States of America,
District of Hawaii—ss.

I, Wm. F. Thompson, Jr., Clerk of the United States District Court for the District of Hawaii, do hereby certify the foregoing to be a full, true and correct statment showing the time of commencement of the above-entitled cause, the names of the original parties, the dates when the respective pleadings were filed, the times when proceedings were had, the name of the judge presiding, and the dates when appeal pleadings were filed in the above-entitled cause.

In Witness Whereof, I have hereunto set my hand and affixed the seal of said District Court, this 5th day of November, 1947.

[Seal] /s/ WM. F. THOMPSON, JR.,
Clerk, United States District Court, District of Hawaii. [3]

In the United States District Court for the
Territory of Hawaii

October Term, 1945

Civil No. 704

KANAME FUJINO,

Plaintiff,

vs.

JAMES E. MARKHAM as

Alien Property Custodian,

Defendant.

COMPLAINT

To the Honorable the Judges of the United States
District Court for the Territory of Hawaii:

Kaname Fujino, a citizen of the United States of America, residing in Honolulu, City and County of Honolulu, Territory of Hawaii, brings this his bill of complaint against James E. Markham, as Alien Property Custodian, duly qualified and acting under the "Trading with the Enemy Act," as amended, alleges and shows:

First: That at all times hereinafter mentioned and since February 23, 1919, the Plaintiff, Kaname Fujino, was and now is, a citizen of the United States of America, having been born in Honolulu, City and County of Honolulu, Territory of Hawaii, on February 23, 1919.

Second: That Plaintiff is a permanent resident of said Honolulu, Territory of Hawaii, and has been a resident of said Territory of Hawaii since

the time of his birth, except for short periods of time as hereinafter mentioned, to-wit: That Plaintiff was temporarily absent from said Territory of Hawaii for a brief period of three or four months in 1925 when, [5] as an infant, he was taken by his mother to the Empire of Japan, where he remained for a period of approximately four months; and that said Plaintiff was again a visitor in Japan from August 7, 1934 to April 26, 1941, when he remained in Tokyo, Japan, for the purpose of and while attending school and that immediately upon graduation from school he departed from Japan on or about April 26, 1941, and returned to said Honolulu, Territory of Hawaii, and resumed his residence and domicile in the Territory of Hawaii on May 4, 1941; and that since said last mentioned date said Plaintiff has been and now is, a resident of said Honolulu, Territory of Hawaii.

Third: That except as above set forth said Plaintiff has been residing continuously within said Territory of Hawaii from the time of his birth up to the present, and Plaintiff has not been within a designated enemy country except as above mentioned, and said Plaintiff was not nor at any time has been, an "enemy" or any "ally of enemy" within the meaning and purview of those terms as used and defined in the Act of October 6, 1917, known as and hereinafter referred to as the "Trading with the Enemy Act," or in any Act amendatory thereof and supplemental thereto, or in any proclamation or executive order issued by the President of the United States.

Fourth: That said Plaintiff is not now and has not been, a "national" of any foreign country or any designated enemy country within the meaning and purview of that term as used and defined in the Act of October 6, 1917, known as the "Trading with the Enemy Act," as amended by Title III of the First War Powers Act, 1941, or in any Act amendatory thereof and supplemental thereto, or in any proclamation or executive order issued by the President of the United States, except insofar as the Plaintiff may have been considered a national [6] of Japan by reason of his temporary residence in Japan prior to April 26, 1941, as hereinabove set forth.

Fifth: That at all times since March 21, 1941, the Plaintiff was and now is, the sole owner of the real property more particularly described in Exhibit "A" of Vesting Order No. 2724, a photostatic copy of which is attached hereto, marked Exhibit "I" and made a part hereof.

Sixth: That at no time since March 21, 1941, has any individual, partnership, association, corporation, or any organization, other than the Plaintiff, Kaname Fujino, had or now has, any right, title or interest in and to said real property or any part thereof.

Seventh: That at no time since March 21, 1941, has Yotaro Fujino, father of the Plaintiff and the national of Japan mentioned in Vesting Order No. 2724 hereinafter mentioned, had or now has, any

right, title, interest, claim or equity in and to said real property or any part thereof.

Eighth: That Plaintiff did not, at any time since March 21, 1941, hold and Plaintiff does not now hold, title to said real property as a cloak for or for the use or benefit of said Yotaro Fujino or any other person, partnership, corporation, association, or any organization.

Ninth: That since March 21, 1941, said Plaintiff held the legal title to said real property for his own use and benefit and said Plaintiff now holds said real property for his (Plaintiff's) sole use and benefit.

Tenth: That heretofore, to-wit, on December 3, 1943, Leo T. Crowley as Alien Property Custodian issued Vesting Order No. 2724, a photostatic copy of which is hereto annexed and made a part hereof and marked Exhibit "I."

Eleventh: That on or about December 31, 1943, said Vesting Order No. 2724 was served upon said Plaintiff by an [7] agent or representative of said Leo T. Crowley as Alien Property Custodian: that said Defendant as such Alien Property Custodian, purporting to act pursuant to the authority vested in him by the "Trading with the Enemy Act" as amended and Executive Order No. 9095, as amended, wrongfully and illegally took from the Plaintiff the possession and control of said real property and wrongfully seized and vested said real property.

Twelfth: That Plaintiff was not acting or purporting to act, directly or indirectly, for the benefit of Yotaro Fujino on March 21, 1941, or on December 3, 1943, or on December 31, 1943; that in fact and in truth said Plaintiff has not been acting or purporting to act, directly or indirectly, for the benefit of Yotaro Fujino in connection with said real property since March 21, 1941; and that said Yotaro Fujino has not been the beneficial owner of said real property since March 21, 1941.

Thirteenth: That said Leo T. Crowley was, at the time of the issuance of said Vesting Order, the duly appointed Alien Property Custodian, purporting to act pursuant to the authority vested in him by the "Trading with the Enemy Act," as amended, and Executive Order No. 9095, as amended.

Fourteenth: That the Defendant, James E. Markham, is the successor in office of said Leo T. Crowley and is now the duly appointed, qualified and acting Alien Property Custodian.

Fifteenth: That said Leo T. Crowley, as Alien Property Custodian, the predecessor in office of said Defendant, James E. Markham, has, since the service of said Vesting Order upon said Plaintiff, wrongfully, illegally, and contrary to the rights of said Plaintiff as a citizen of the United States [8] of America and contrary to the law and to the Constitution of the United States of America, taken possession of said Plaintiff's real property and has assumed supervision, control and direction of said real property, and the said Defendant, James E.

Markham as Alien Property Custodian, as successor in office of said Leo T. Crowley, has taken over possession of said real property and the supervision, control and direction of same, and is now in possession of and has supervision, control and direction of same, and is now in possession of and has supervision, control and direction of said real property.

Sixteenth: That since the service of said Vesting Order upon said Plaintiff, said Leo T. Crowley as Alien Property Custodian and said Defendant, James E. Markham as his successor and as Alien Property Custodian, have collected the rents, issues and profits from said real property; that said Defendant, James E. Markham, is still collecting said rents, issues and profits.

Seventeenth: That said Plaintiff as heretofore and on the 27th day of March, 1944, duly made and filed with the Office of the Alien Property Custodian, at Washington, District of Columbia, through the Honolulu Office of said Alien Property Custodian, notice of his claim to said real property, under oath, and in such form and containing such particulars required by said Custodian, in conformity with and pursuant to the statutes, requirements and orders in such cases made and provided; and that no hearing has been granted in connection with said claim although request for such hearing was made in connection with said claim.

Eighteenth: That said Defendant, James E. Markham as Alien Property Custodian, has failed, neglected and refused to allow said claim as filed by said Plaintiff or to grant a hearing thereon; and said Defendant has failed, neglected and [9] refused to return the possession of said real property to said Plaintiff; and although requested to do so by the said Plaintiff, said Defendant has failed, neglected and refused to relinquish the supervision, control and direction of said real property.

Nineteenth: That said Plaintiff is informed and believes that said Defendant, James E. Markham as Alien Property Custodian, through his duly authorized representatives, agents and servants, has been and now is, attempting to sell and dispose of said real property.

Twentieth: That said proposed and threatened sale and disposition of said real property by the said Defendant as Alien Property Custodian is contrary to law and to the Constitution of the United States of America, and that said proposed or threatened sale is wrongful, illegal and contrary to the rights of said Plaintiff as a citizen of the United States of America and as owner of said real property.

Twenty-first: That the reasonable value of said real property was, at the time of the issuance of said Vesting Order, and now is, in excess of \$29,000.00

Twenty-second: That the aforesaid wrongful and illegal possession, supervision, control and direction of said real property by the said Defendant have caused and will cause irreparable damages to said Plaintiff.

Twenty-third: That said threatened sale of said real property by said Defendant, if carried out, will cause irreparable damages to said Plaintiff.

Twenty-fourth: That said Plaintiff has no adequate remedy at law.

Wherefore, Plaintiff prays that a summons be issued out of this Court, directed to said James E. Markham [10] as Alien Property Custodian, commanding him on a day certain, to appear and answer to this bill of complaint, and obey and perform such orders and decrees in the premises as to the Court may seem proper, and required by the principles of equity and good conscience; and

The Plaintiff prays that a decree be entered herein restraining the sale of said real property by the said Defendant, James E. Markham as Alien Property Custodian, as well as his representatives, agents, servants and employees, pending determination of this action, and that it be adjudged that the right and title in said real property are in said Plaintiff and that said Plaintiff is entitled to the immediate possession thereof and directing said Defendant to transfer and deliver to said Plaintiff said real property and to render a full, true and correct accounting of any moneys or rent received or collected by the Defendant in connection with the supervision, control and direction of said real

property and declaring that said Vesting Order No. 2724 issued by Leo T. Crowley as Alien Property Custodian and as the predecessor in office of the said Defendant, James E. Markham, is a nullity and of no effect.

The Plaintiff prays for such other, further and different relief as to the Court may seem equitable, just and proper.

Dated: Honolulu, T. H., February 7th, 1946.

/s/ KANAME FUJINO,

Plaintiff.

SMITH, WILD, BEEBE &
CADES,

By /s/ E. H. BEEBE,

Attorneys for Plaintiff.

Territory of Hawaii,
City and County of Honolulu—ss.

Kaname Fujino, being first duly sworn, on oath deposes and says:

That he is the Plaintiff named in the foregoing Complaint; that he has read the same, knows the contents thereof and that the same is true.

/s/ KANAME FUJINO.

Subscribed and sworn to before me this 11th day of February, 1946.

[Seal] /s/ FRIEDA H. ROBERT,
Notary Public, First Judicial Circuit, Territory of
Hawaii.

My commission expires June 30, 1949. [12]

United States of America
Office of Alien Property Custodian
Vesting Order Number 2724

Re: Real properties, bank accounts and claims
owned by Yotaro Fujino

Under the authority of the Trading With the Enemy Act, as amended, and Executive Order No. 9095, as amended, and pursuant to law, the undersigned, after investigation, finding:

1. That the last known address of Yotaro Fujino, also known as Yootaro Fujino, is Tokyo, Japan, and that he is a resident of Japan and a national of a designated enemy country (Japan);
2. That Kaname Fujino, a citizen of the United States residing at Honolulu, Territory of Hawaii, is acting or purporting to act directly or indirectly for the benefit, or on behalf of, Yotaro Fujino, a national of a designated enemy country (Japan), who is at present within such designated enemy country, and that the said Kaname Fujino is a national of a designated enemy country (Japan);
3. That Yotaro Fujino is the beneficial owner of the real property described in subparagraph 5-a hereof, held in the name of Kaname Fujino, and that Yotaro Fujino is the owner of the property described in subparagraphs 5-b and 5-c hereof;
4. That Kaname Fujino is the record owner of the real property described in subparagraph 5-a hereof;

5. That the property described as follows:

- a. Real property situated in the City and County of Honolulu, Territory of Hawaii, particularly described in Exhibit A attached hereto and by reference made a part hereof, together with all hereditaments, fixtures, improvements and appurtenances thereto, and any and all claims for rents, refunds, benefits or other payments arising from the ownership of such property,
- b. All right, title, interest and claim of Yotaro Fujino in and to those two savings accounts in the Yokohama Specie Bank, Ltd., Honolulu, Territory of Hawaii, which are due and owing to, and held for Yotaro Fujino, in the names of Oahu Lumber & Hardware Company (Receiver's Claim No. 2083) and Oahu Junk Company, Ltd. (Receiver's Claim No. 2081), including but not limited to all security rights in and to any and all collateral for any and all of such accounts, and the right to enforce and collect the same, and
- c. Those certain promissory notes in the amounts of \$20,000, \$11,700 and \$11,700, executed on December 5, 1940, by Kaname Fujino, a minor, by Tokuichi Tsuda and Yasuo (Harry Y.) Tsutsumi, his attorneys in fact, Katsue Fujieki and Shizue Maneki, respectively, which are now in the possession of Tokuichi Tsuda and Yasuo (Harry Y.) Tsutsumi, and any and all obligations evidenced by said

promissory notes, including but not limited to all security rights in and to any and all collateral (including the shares [13] of capital stock of Oahu Junk Company, Ltd. issued to Kaname Fujino, Katsue Fujieki and Shizue Maneki and pledged to secure the payment of the aforesaid notes) for any and all such obligations, and the right to enforce and collect such obligations, and the right to the possession of any and all notes, bonds, or other instruments evidencing such obligations, is property within the United States owned or controlled by nationals of a designated enemy country (Japan);

And determining that the property described in subparagraph 5-b hereof is necessary for the maintenance or safeguarding of other property (namely, that property described in subparagraph 5a hereof) belonging to the same national of the same designated enemy country and subject to vesting (and in fact vested by this Order) pursuant to Section 2 of said Executive Order;

And determining that to the extent Kaname Fujino is the owner of record of the real property described in subparagraph 5-a hereof, he is controlled by, or acting for or on behalf of, Yotaro Fujino, a national of a designated enemy country (Japan), who is a person within such country;

And further determining that to the extent that such nationals are persons not within a designated

enemy country, the national interest of the United States requires that such persons be treated as nationals of a designated enemy country (Japan);

And having made all determinations and taken all action, after appropriate consultation and certification required by law, and deeming it necessary in the national interest,

Hereby Vests in the Alien Property Custodian the property described in subparagraph 5-a hereof, subject to recorded liens, encumbrances and other rights of record held by or for persons who are not nationals of designated enemy countries, and

Hereby Vests in the Alien Property Custodian the property described in subparagraph 5-b hereof, subject to any and all valid claims of the Oahu Junk Company, Ltd. against the same, and

Hereby Vests in the Alien Property Custodian the property described in subparagraph 5-c hereof,

All such property so vested to be held, used, administered, liquidated, sold or otherwise dealt with in the interest, and for the benefit, of the United States.

Such property and any or all of the proceeds thereof shall be held in an appropriate account, or accounts, pending further determination of the Alien Property Custodian. This Order shall not be deemed to limit the power of the Alien Property Custodian to return such property or the proceeds thereof in whole or in part, nor shall this Order be deemed to indicate that compensation will not be

paid in lieu thereof, if and when it should be determined to take any one or all of such actions.

Any person, except a national of a designated enemy country, asserting any claim arising as a result of this Order may, within [14] one year from the date hereof, or within such further time as may be allowed, file with the Alien Property Custodian on Form APC-1 a notice of claim, together with a request for a hearing thereon. Nothing herein contained shall be deemed to constitute an admission of the existence, validity or right to allowance of any such claim.

The terms "national" and "designated enemy country" as used herein shall have the meanings prescribed in Section 10 of Executive Order No. 9095, as amended.

Executed at Washington, D. C., on December 3, 1943.

[Seal] /s/ LEO T. CROWLEY,
Alien Property Custodian.

I hereby certify that the within is a true and correct copy of the original paper on file in this office,
LEO T. CROWLEY,
Alien Property Custodian,

By /s/ JOHN W. WATSON,
Assistant Secretary for Records, Office of Alien
Property Custodian. [15]

EXHIBIT A

Re: Real property owned by Yotaro Fujino

All those tracts or parcels of land situated in the City and County of Honolulu, Territory of Hawaii, particularly described as follows:

First Parcel of Land

All that certain parcel of land (portion of the land described in Royal Patent 688, Land Commission Award 1239, Apana 2, to Pine) situate at Kapalama, Honolulu aforesaid, and thus bounded and described:

Beginning at the South corner of King Street and a lane leading to the Former Japanese Hospital, and running as follows:

1. S. $33^{\circ} 10'$ E. true 112 feet along King Street;
2. S. 63° W. true 150 feet along remaining portion of Apana 2, R. P. 688 to Pine;
3. N. $23^{\circ} 35'$ W. true 102 feet along Japanese Hospital;
4. Thence to the initial point, along lane 132.5 feet.

Containing an area of 15,000 square feet, or thereabouts, and being the land conveyed to the Mortgagor by Lam Shee, by deed dated August 3, 1926, and recorded in the Bureau of Conveyances at Honolulu in Book 842, page 4.

Second Parcel of Land

All that certain parcel of land (portion of the land described in Land Commission Award 2222, Apana 3, to Kapalu) situate at Kapalama, Honolulu aforesaid, and thus bounded and described:

Beginning at a 1" galvanized iron pipe, at the North corner of this lot and the west corner of

Lot No. 3, the coordinates of said point of beginning referred to Government Survey Trig. Station "Punchbowl" being 5142.6 feet north and 7246.2 feet west, and running by true azimuths and distances:

1. 334° 10' 114.8 feet along Lot 3 to a 1" galvanized iron pipe;
2. 62° 19' 107.9 feet along Lot 1 to a 1" galvanized iron pipe;
3. 146° 45' 115.2 feet along fence, along B. P. Bishop Estate to a 1" galvanized iron pipe;
4. 242° 19' 122.8 feet along fence along L. C. A. 1917, Apana 1, to Hiki, to Nieper, to the point of beginning.

Containing an area of 13,234 square feet, or thereabouts, and being the land conveyed to the Mortgagor by Sano Danjo, by deed dated March 1, 1923, and recorded in said Bureau in Book 671, page 319.

Third Parcel of Land

All that certain parcel of land (portion of the land described in Royal Patent 2082, Land Commission Award 2222, Apana 3 to Kapalu) situate at Kapalama, Honolulu aforesaid, and thus bounded and described:

Beginning at 1 in. galv. iron pipe, at the North corner of this lot and the East corner of Lot No. 3, the coordinates [16] of said point of beginning referred to City and County Survey Trig. Station "Punchbowl" being 5045.3' North and 7214.7' West and running by true azimuths and distances:

1. 334° 20' 115.4 feet along fence, along L.C.A. #1239 to Pine, to J. H. Schnack, to a post;

2. $61^{\circ} 24'$ 102.4 feet along L.A.C. #4455 Ap. 1 to Kaaloa, to a $1\frac{1}{4}$ in. galv. iron pipe in concrete;
3. $146^{\circ} 45'$ 117.7 feet along fence, along B. P. Bishop Estate to a 1 in. galv. iron pipe;
4. $242^{\circ} 19'$ 117.9 feet along Lots #2 and #3 to the point of beginning.

Containing an area of 12,810 square feet, or thereabouts, and being the land conveyed to the Mortgagor by Jirokichi Fujiyoshi, by deed dated October 5, 1933, and recorded in said Bureau in Book 1219, page 193.

Fourth Parcel of Land

All that certain parcel of land (portion of the land described in Royal Patent 1506, Land Commission Award 2319, Apana 2 to Nawai) adjoining the Kalihi Branch of the Oahu Railway & Land Co.'s 40 foot Right of Way, Southeasterly from Waiakamilo Road at Kapalama, Honolulu aforesaid, and thus bounded and described:

Beginning at a pipe at the South corner of this piece of land, on the Northeast side of the Oahu Railway and Land Company's 40 foot Right of Way (Kalihi Branch) the coordinates of said point of beginning referred to Government Survey Triangulation Station "Mokauea" being 5541.20 feet South and 1710.02 feet West and running by true azimuths:

1. $146^{\circ} 07'$ 60.22 feet along Oahu Railway and Land Company's 40 foot Right of Way (Kalihi Branch) to a pipe in concrete;
2. $155^{\circ} 40'$ 63.85 feet along Section "Z" of Land Court Application 750 to a pipe in concrete;
3. $243^{\circ} 02'$ 136.70 feet to a pipe in concrete;

4. 325° 00' 168.70 feet along Section "Y" of Land Court Application 750 to a pipe in concrete;
5. 78° 23' 161.62 feet to the point of beginning.

Containing an area of 21,224 square feet, or thereabouts, and being the land conveyed to the Mortgagor by Bishop Trust Company, Limited, Trustee, by deed dated January 28, 1933, and recorded in said Bureau in Book 1192, page 464.

Fifth Parcel of Land

All that certain parcel of land (portion of the land described in L. C. A. 7714-B, Apana 7 to Moses Kekuaiwa; R. P. 2145 L. C. A. 2319, Part 2, Apana 2 to Nawai) situate at Kapalama, Honolulu aforesaid, and bounded and more particularly described as follows:

Beginning at a point on the Easterly boundary of this piece of land and the Westerly side of the Oahu Railway and Land Company's 40-foot Right of Way, the coordinates of said point of beginning referred to Government Survey Triangulation Station "Punchbowl" being 4,739.4 feet North, 7,605.9 feet West, and the true azimuth and distance to a 1¼ inch pipe set in concrete monument on the East line of L. C. A. 8515, Apana 1 to Keoni Ana, being 326° 07' 429.00 feet, and running by [17] true azimuths:

1. 81° 25' 20.30 feet along portion of Kapalama owned by the Andrews Estate;
2. 357° 10' 72.00 feet along same;
3. 333° 10' 98.50 feet along same;
4. 69° 15' 69.50 feet along L. C. A. 8515, Apana 1 to Keoni Ana to a pipe in concrete;

5. 151° 00' 96.00 feet along Kapalama to a pipe in concrete;
6. 66° 15' 134.00 feet along same to a pipe in concrete;
7. 161° 10' 62.50 feet along L. C. A. 1730, Apana 2, Kilauea;
8. 228° 00' 50.00 feet along same;
9. 136° 05' 55.00 feet along same;
10. 79° 20' 36.00 feet along same;
11. 152° 30' 50.00 feet along L. C. A. 1731, Apana 1, to Kaaua;
12. 241° 30' 52.00 feet along same;
13. 166° 00' 147.00 feet along same;
14. 245° 00' 130.00 feet along L. C. A. 1730, Apana 1, to Kilauea;
15. 326° 07' 283.00 feet along the Westerly side of the Oahu Railway and Land Company's 40-foot Right of Way to the point of beginning and containing an area of 1.63 acres, or thereabouts.

Being the land conveyed to the Mortgagor by Watson Ballentyne, by deed dated October 28, 1936, and recorded in said Bureau in Book 1348, page 261.

Sixth Parcel of Land

All that certain parcel of land situate at Kapalama, City and County of Honolulu, said Territory, described as follows:

Lot Twenty-five-C (25-C), area 3,028.0 square feet, of Section C, as shown on Map 3, filed in the Office of the Assistant Registrar of the Land Court of the Territory of Hawaii with Land Court Application No. 750 of the Trustees under the Will and of the Estate of Bernice P. Bishop, deceased, and being all of the land comprised in Transfer Certificate of Title No. 17,544 issued to the Mortgagor.

[Title of District Court and Cause.]

SUMMONS

To the above named Defendant:

You are hereby summoned and required to serve upon Smith, Wild, Beebe & Cades plaintiff's attorney, whose address is Bishop Trust Building, Honolulu, T. H., an answer to the complaint which is herewith served upon you, within 60 days after service of this summons upon you, exclusive of the day of service. If you fail to do so, judgment by default will be taken against you for the relief demanded in the complaint.

[Seal] WM. F. THOMPSON, JR.,
Clerk of Court.

By /s/ THOS. P. CUMMINS,
Deputy Clerk.

Date: February 13th, 1946.

Note—This summons is issued pursuant to Rule 4 of the Federal Rules of Civil Procedure.

[Endorsed]: Filed Feb. 13, 1946. [19]

Territory of Hawaii,
City and County of Honolulu—ss.

Emmanuel U. Moses, Jr., being first duly sworn on oath deposes and says:

That at all times hereinafter mentioned he has been and now is Deputy United States Marshal, Territory of Hawaii;

That on the 13th day of February, 1946, in Honolulu, City and County of Honolulu, Territory of Hawaii, he duly served the Summons and Complaint in the above entitled cause upon James E.

Markham as Alien Property Custodian, Defendant above named, by handing to and leaving with James G. Hammond, Acting Manager, Honolulu Office, Alien Property Custodian, a certified copy of the Summons and Complaint, and then and there mailing a certified copy of said Summons and Complaint by registered mail to Tom C. Clark, Attorney General of the United States of America; and further that on the 14th day of February, 1946, in Honolulu, City and County of Honolulu, Territory of Hawaii, he duly served the Summons and Complaint in the above entitled cause upon Ray J. O'Brien, United States Attorney, District of Hawaii, by handing to and leaving with him a certified copy of the Summons and Complaint.

/s/ EMMANUEL U. MOSES, JR.

Subscribed and sworn to before me this 14th day of February, 1946.

[Seal] /s/ THOS. P. CUMMINS,

Deputy Clerk, United States
District Court, Territory of
Hawaii. [20]

RETURN OF SERVICE WRIT

United States of America,
District of Columbia—ss.

Re: Kaname Fujino v. James E. Markham as Alien
Property Custodian—Civil Action No. 704.

I hereby certify and return that I served the annexed summons and complaint on the therein-named defendant James E. Markham, Alien Property Custodian, by handing to and leaving a true and correct copy of said summons and complaint with said

James E. Markham personally at National Press Building in said District on the 5th day of March, A.D. 1946.

W. BRUCE MATTHEWS,

U. S. Marshal.

By /s/ EDGAR J. McCLOY,

Deputy.

[Registered article No. 39535 return receipt attached.]

[Title of District Court and Cause.]

ANSWER

For his answer to plaintiff's complaint, defendant states and alleges:

I.

He admits the allegations contained in paragraph first of the complaint.

II.

He is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph Second of the complaint.

III.

He is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph Third of the complaint.

IV.

He denies the allegations contained in paragraph Fourth of the complaint. [22]

V.

He denies the allegations contained in paragraph Fifth of the complaint.

VI.

He denies the allegations contained in paragraph Sixth of the complaint.

VII.

He denies the allegations contained in paragraph Seventh of the complaint.

VIII.

He denies the allegations contained in paragraph Eighth of the complaint.

IX.

He denies the allegations contained in paragraph Ninth of the complaint.

X.

He admits the allegations contained in paragraph Tenth of the complaint.

XI.

He denies the allegations contained in paragraph Eleventh of the complaint except that part thereof reading "That on or about December 31, 1943, said Vesting Order No. 2724 was served upon said Plaintiff by an agent or representative of said Leo T. Crowley as Alien Property Custodian," which he admits.

XII.

He denies the allegations contained in paragraph Twelfth of the complaint.

XIII.

He admits the allegations contained in paragraph Thirteenth of the complaint. [23]

XIV.

He admits the allegations contained in paragraph Fourteenth of the complaint.

XV.

He admits the allegations contained in paragraph Fifteenth of the complaint except that part thereof reading "wrongfully, illegally, and contrary to the rights of said Plaintiff as a citizen of the United States of America and contrary to the law and to the Constitution of the United States of America," which he denies.

XVI.

He admits the allegations contained in paragraph Sixteenth of the complaint.

XVII.

He admits the allegations contained in paragraph Seventeenth of the complaint, except denies that a notice of claim was "duly" filed.

XVIII.

He admits that he has not allowed plaintiff's claim and that he has refused to return the possession and relinquish the supervision, control and direction of the real property described in Exhibit "A" of Vesting Order No. 2724 attached to and made a part of the complaint as Exhibit "I" as alleged in paragraph Eighteenth, but denies each and every other allegation contained in said paragraph.

XIX.

He denies the allegations contained in paragraph Nineteenth of the complaint.

XX.

He denies the allegations contained in paragraph Twentieth of the complaint.

XXI.

He admit the allegations contained in paragraph Twenty-first of the complaint. [24]

XXII.

He denies the allegations contained in paragraph Twenty-second of the complaint.

XXIII.

He denies the allegations contained in paragraph Twenty-third of the complaint.

XXIV.

He denies the allegations contained in paragraph Twenty-fourth of the complaint.

For a First Separate and Complete Defense,
Defendant States and Alleges:

XXV.

That previous to March 21, 1941, the real and beneficial ownership of, and the record title to, the real property described in Exhibit "A" of Vesting Order N. 2724, attached to and made a part of the complaint as Exhibit "I," were in Yotaro Fujino, a citizen and resident of Japan.

XXVI.

That on February 20, 1941, Yotaro Fujino, by an instrument in writing, a true and correct copy of which is attached hereto as Exhibit "D" and made a part of this answer, made, constituted and appointed Tokuichi Tsuda and Yasuo Tsutsumi his attorneys in fact for the purposes and with the powers therein set forth.

XXVII.

That on March 21, 1941, contrary to their powers as set forth in said written instrument, and without other lawful authority, Tokuichi Tsuda and Yasuo Tsutsumi, purporting to act as attorneys in fact for Yotaro Fujino, purported to give, transfer and convey the said real property by an alleged deed of warranty, a true and correct copy of which alleged deed is hereto attached as Exhibit "B" and made a part of this answer, to plaintiff. [25]

XXVIII.

That by reason of said lack of authority, the alleged deed of warranty did not give, transfer or convey the ownership of the said real property to plaintiff, but the real and beneficial ownership of said real property continued to be in Yotaro Fujino.

For a Second Separate and Complete Defense,
Defendant States and Alleges:

XXIX.

That the purported gift, transfer and conveyance of said real property to plaintiff, and the subse-

quent recording of the alleged deed in the Bureau of Conveyances, Territory of Hawaii, as is shown by Exhibit "B" attached hereto, were to conceal and cloak the fact that notwithstanding said purported gift, transfer and conveyance and record of ownership, Yotaro Fujino, a national of a designated enemy country (Japan), living in said enemy country, was to remain, and did remain up to the time of Vesting Order No. 2724, the real and beneficial owner of said real property.

XXX.

That the purported gift, transfer and conveyances and record of ownership was effected by plaintiff, Yotaro Fujino, and his attorneys in fact, Tokuichi Tsuda and Yasuo Tsutsumi, in a conspiracy, and with the purpose and intent, to defraud and to continue to defraud the United States of America by concealing the identity of the true, real and beneficial owner of the said property, and thereby prevent seizure thereof in the event of war.

XXXI.

That the purported gift, transfer and conveyance and record of ownership was fictitious, sham and fraudulent and did not transfer ownership of the said real property to plaintiff, but on the contrary the real and beneficial ownership of said real property continued to be in Yotaro Fujino. [26]

For a Third and Separate and Complete
Defense, Defendant States and Alleges:

XXXII.

That at all times between March 21, 1941, and the date of Vesting Order No. 2724, plaintiff, with respect to said real property, acted directly or indirectly for the benefit of, or on behalf of, Yotaro Fujino, a national of a designated enemy country (Japan), then living within such designated enemy country, and plaintiff is therefore a national of a foreign country and of a designated enemy country (Japan) within the purview of the Trading with the Enemy Act, as amended, and Executive Order No. 9095, as amended, and as such has no standing to institute or maintain this action.

Wherefore, defendant prays that plaintiff's complaint be dismissed and that he recover his costs and disbursements.

/s/ RAY J. O'BRIEN,

United States Attorney for the Territory of Hawaii,
Honolulu, Hawaii.

/s/ JOHN F. SONNETT,

Assistant Attorney General.

/s/ HARRY LEROY JONES,

/s/ IRVING J. LEVY,

Special Assistants to the
Attorney General.

/s/ ROY C. FRANK,

Chief Trial Attorney, Claims Division, Department
of Justice, Washington, D. C.,

Attorneys for Defendant.

Office of the Assistant Registrar, Land Court, Territory of Hawaii (Bureau of Conveyances)

Honolulu, Hawaii, March 17, 1941.

The attached instrument is a true copy of Document Number 57281, received for registration in this office, March 17, 1941, at 2:33 o'clock p.m., and noted on Certificate of Title Number 3.

Attest:

[Seal] /s/ OLIVER R. AIU,

Assistant Registrar, Land
Court, Territory of Hawaii.

EXHIBIT "D"

Power of Attorney

Know All Men by These Presents:

That I, Yotaro Fujino, also known as Yootaro Fujino, formerly residing in Honolulu, City and County of Honolulu, Territory of Hawaii, but now residing in Tokyo, Japan, do hereby make, constitute and appoint Tokuichi Tsuda and Yasuo Tsutsumi, whose residence and post office address is 1217 North King Street, Honolulu, aforesaid, jointly, my true and lawful attorneys in fact for me and in my name, place and stead and for my use and benefit, to do all or any of the following acts and things, that is to say: To carry on and transact all my business in the Territory of Hawaii; to enter into, perform and carry out, and to rescind, terminate and cancel contracts of all kinds; to buy, take on lease and otherwise acquire, and to hold, sell, mortgage, hypothecate, pledge, lease and otherwise dis-

pose of, and in any and every way and manner deal with real property, leaseholds and other interests in real property, stocks, bonds, goods, wares, merchandise, choses in action and other property and rights of any nature whatsoever in possession or in action; to sign, seal, execute, acknowledge and deliver deeds, bills of sale, contracts, agreements, options, leases and other instruments; to transact my business with Bishop National Bank of Hawaii at Honolulu; to draw checks for the withdrawal of funds from said bank; to endorse checks, promissory notes, drafts, and bills of exchange for collection or deposit; to accept drafts and other negotiable instruments and to receive, endorse and negotiate and deliver bills of lading and other evidences and documents of title to merchandise, stock certificates and other securities; to waive demand, notice [28] and notice of protest of checks, bills, notes and other negotiable instruments; to borrow money from time to time upon such terms and at such rates of interest as my said attorneys shall deem property and expedient either without security or upon the security of all or any portion or portions of my property whether real, personal or mixed, and to give, make, sign, seal, execute, acknowledge and deliver promissory notes and other obligations, mortgages, pledge agreements, hypothecations and other securities and any such mortgage, pledge agreement or hypothecation may be with such powers of sale and/or foreclosure and may contain such other provisions, covenants and conditions as my said attorneys may agree to, and to execute all documents and writings of whatsoever kind and na-

ture in connection therewith; to collect, receive, enforce payment and collection of and otherwise reduce to possession, and receipt and give releases and discharges for all sums of money and other kinds of property whatsoever that may be due, payable or belonging to me, or to which I may be entitled to possession of; to remise, release and quit-claim to all my estate, right, title and interest including any curtesy in any property of whatsoever kind and nature; to give, make, sign, seal, execute and deliver such bonds, guaranty, indemnity or other agreements or undertakings as may be necessary or proper or convenient in connection with any of the transactions hereby authorized; and to vote at any and all meetings of stockholders any shares of stock which I may own on any and all questions that may come before such meetings.

And I hereby revoke those two certain powers of attorney heretofore made by me to my said attorneys, both dated February 12, 1935, one signed Yootaro Fujino and recorded in [29] the Bureau of Conveyances at Honolulu in Honolulu aforesaid, in Book 1270, Page 42, and the other signed Yotaro Fujino, recorded in said Bureau in Book 1357, Page 73.

Giving and granting unto my said attorneys jointly full power and authority to do and perform all and every act and thing whatsoever requisite and necessary to be done in and about the premises as fully to all intents and purposes as I might or could do if personally present, and to do any of said acts and things either for me alone and/or jointly with another or others, and with full power

of substitution and revocation; and I hereby ratify and confirm, and covenant to ratify and confirm, all that my said attorneys or any substitute or substitutes shall lawfully do or cause to be done by virtue of these presents.

In witness whereof, I have hereunto set my hand and seal this 20th day of February, 1941.

[Seal] /s/ YOTARO FUJINO [30]

Certificate of Acknowledgement of
Execution of Document

Empire of Japan, Prefecture of Tokyo, City of
Tokyo, Consulate General of the United States
of America.

I, Charles H. Stephan, Vice Consul of the United States of America at Tokyo, Japan, duly commissioned and qualified, do hereby certify that on this 20th day of February, 1941, before me personally appeared Yotaro Fujino, sometimes known as Yoo-taro Fujino, to me personally known, and known to me to be the individual described in, whose name is subscribed to, and who executed the annexed instrument, and being informed by me of the contents of said instrument, he duly acknowledged to me that he executed the same freely and voluntarily for the uses and purposes therein mentioned.

In witness whereof, I have hereunto set my hand and official seal the day and year last above written.

/s/ CHARLES H. STEPHAN,

Vice Consul of the United
States of America.

Service No. 732

American Consulate General Fee stamp \$2.00.

Office of the Assistant Registrar, Land Court, Territory of Hawaii (Bureau of Conveyances)

Honolulu, Hawaii, May 19, 1941.

The attached instrument is a true copy of Document Number 58404, received for registration in this office May 19, 1941, at 11:47 o'clock a.m., and noted on Certificate of Title Number, and from which Certificate of Title Number 24074 has been issued.

And also recorded in the Bureau of Conveyances in Liber 1638 Pages 423-427.

Attest:

/s/ OLIVER P. AIU,

Assistant Registrar, Land
Court, Territory of Hawaii.

EXHIBIT B

Transfer of Deed

Know All Men by These Presents:

That Yotaro Fujino (also known as Yootaro Fujino), whose wife's name is Chiyono Fujino, of Honolulu, City and County of Honolulu, Territory of Hawaii, Grantor, for and in consideration of the sum of One Dollar (\$1.00) to him in hand paid by his son, Kaname Fujino, an unmarried man, whose residence and post office address is 1217 North King Street, Honolulu aforesaid, Grantee, the receipt whereof is hereby acknowledged, and in further

consideration of the love and affection which the Grantor has for the Grantee, does hereby given, grant, bargain, sell and convey unto said Grantee, his heirs and assigns:

First: All that certain parcel of land (portion of the land described in Royal Patent 688, Land Commission Award 1239, Apana 2, to Pine) situate at Kapalama, Honolulu aforesaid, and thus bounded and described:

Beginning at the South corner of King Street and a lane leading to the former Japanese Hospital, and running as follows:

1. S. $33^{\circ} 10'$ E. true 112 feet along King Street;
2. S. 63° W. true 150 feet along remaining portion of Apana 2, R. P. 688 to Pine;
3. N. $23^{\circ} 35'$ W. true 102 feet along Japanese Hospital;
4. Thence to the initial point, along lane 132.5 feet.

Containing an area of 15,000 square feet, or thereabouts, and being the land conveyed to the Grantor by Lam Shee, by deed dated August 3, 1926, and recorded in the Bureau of Conveyances at Honolulu in Book 842, Page 4.

Second: All that certain parcel of land (portion of the land described in Land Commission Award 2222, Apana 3, to Kapalu) situate at Kapalama, Honolulu aforesaid, and thus bounded and described:

Beginning at a 1" galvanized iron pipe, at the North corner of this lot and the west corner of Lot No. 3, the coordinates of said point of beginning referred to Government Survey Trig. Station

“Punchbowl” being 5142.6 feet North and 7247.2 feet West, and running by true azimuths and distances:

1. 334° 10' 114.8 feet along Lot 3 to a 1" galvanized iron pipe;
2. 62° 19' 107.9 feet along Lot 1 to a 1" galvanized iron pipe;
3. 146° 45' 115.2 feet along fence, along B. P. Bishop Estate to a 1" galvanized iron pipe;
4. 242° 19' 122.8 feet along fence along L. C. A. 1917, Apana 1, to Hiki, to Nieper, to the point of beginning.

Containing an area of 13,234 square feet, or thereabouts, and being the land conveyed to the Grantor by Sano Danjo, by deed dated March 1, 1923, and recorded in said Bureau in Book 671, Page 319.

Third: All that certain parcel of land (portion of land described in Royal Patent 2082, Land Commission Award 2222, Apana 3 to Kapalu) situate at Kapalama, Honolulu aforesaid, and thus bounded and described:

Beginning at a 1 in. galv. iron pipe, at the North corner of this lot and the East corner of Lot No. 3, the coordinates of said point of beginning referred to City and County Survey Trig. Station “Punchbowl” being 5045.3' North and 7214.7' West and running by true azimuths and distances:

1. 334° 20' 115.4 feet along fence, along L.C.A. #1239 to Pine, to J. H. Schnack, to a post;
2. 61° 24' 102.4 feet along L.A.C. #4455 Ap. 1 to Kaaloa, to a 1¼ in. galv. iron pipe in concrete;
3. 146° 45' 117.7 feet along fence, along B. P. Bishop Estate to a 1 in. galv. iron pipe;
4. 242° 19' 117.9 feet along Lots #2 and #3 to the point of beginning.

Containing an area of 12,810 square feet, or thereabouts, and being the land conveyed to the Grantor by Jirokichi Fujiyoshi, by deed dated October 5, 1933, and recorded in said Bureau in Book 1219, Page 193.

Fourth: All that certain parcel of land (portion of the land described in Royal Patent 1506, Land Commission Award 2319, Apana 2 to Nawai) adjoining the Kalihi Branch of the Oahu Railway & Land Co.'s 40 foot Right of Way, Southeasterly from Waiakamilo Road at Kapalama, Honolulu aforesaid, and thus bounded and described:

Beginning at a pipe at the South corner of this piece of land, on the Northeast side of the Oahu Railway and Land Company's 40 foot Right of Way (Kalihi Branch) the coordinates of said point of beginning referred to Government Survey Triangulation Station "Mokauea" being 5541.20 feet South and 1710.02 feet West and running by true azimuths:

1. $146^{\circ} 07'$ 60.22 feet along Oahu Railway and Land Company's 40 foot Right of Way (Kalihi Branch) to a pipe in concrete;
2. $155^{\circ} 40'$ 63.85 feet along Section "Z" of Land Court Application 750 to a pipe in concrete;
3. $243^{\circ} 02'$ 136.70 feet to a pipe in concrete;
4. $325^{\circ} 00'$ 168.00 feet along Section "Y" of Land Court Application 750 to a pipe in concrete;
5. $78^{\circ} 23'$ 161.62 feet to the point of beginning.

Containing an area of 21,224 square feet, or thereabouts, and being the land conveyed to the Grantor by Bishop Trust Company, Limited, Trustee, by deed dated January 28, 1933, and recorded in said Bureau in Book 1192, Page 464.

Fifth: All that certain parcel of land (portion of land described in L. C. A. 7714-B, Apana 7 to Moses Kekuaiwa; R. P. 2145, L. C. A. 2319, Part 2, Apana 2 to Nawai) situate at Kapalama, Honolulu aforesaid, and bounded and more particularly described as follows:

Beginning at a point on the Easterly boundary of this piece of land and the Westerly side of the Oahu Railway and Land Company's 40-foot Right of Way, the coordinates of said point of beginning referred to Government Survey Triangulation Station "Punchbowl" being 4,739.4 feet North, 7,605.9 feet West, and the true azimuth and distance to a 1¼ inch pipe set in concrete monument on the East line of L. C. A. 8515, Apana 1 to Keoni Ana, being 3260° 07' 429.00 feet, and running by true azimuths:

1. 81° 25' 20.30 feet along portion of Kapalama owned by the Andrews Estate;
2. 357° 10' 72.00 feet along same;
3. 333° 10' 98.50 feet along same;
4. 69° 15' 69.50 feet along L. C. A. 8515, Apana 1 to Keoni Ana to a pipe in concrete;
5. 151° 00' 96.00 feet along Kapalama to a pipe in concrete;
6. 66° 15' 134.00 feet along same to a pipe in concrete;
7. 161° 10' 62.50 feet along L. C. A. 1730, Apana 2, Kilauea;
8. 228° 00' 50.00 feet along same;
9. 136° 05' 55.00 feet along same;
10. 79° 20' 36.00 feet along same;
11. 152° 30' 50.00 feet along L. C. A. 1731, Apana 1, to Kaaua;
12. 241° 30' 52.00 feet along same;
13. 166° 00' 147.00 feet along same;
14. 245° 00' 130.00 feet along L. C. A. 1730, Apana 1, to Kilauea;
15. 326° 07' 283.00 feet along the Westerly side of the Oahu Railway and Land Company's 40-foot Right of Way to the point of beginning and containing an area of 1.63 acres, or thereabouts.

Being the land conveyed to the Grantor by Watson Ballentyne, by deed dated October 28, 1936, and recorded in said Bureau in Book 1348, Page 261.

Sixth: All that certain parcel of land situate at Kapalama, City and County of Honolulu, said Territory, described as follows:

Lot Twenty-five-C (25-C), area 3,028.0 square feet, of Section C, as shown on Map 3, filed in the Office of the Assistant Registrar of the Land Court of the Territory of Hawaii with Land Court Application No. 750 of the Trustees under the Will and of the Estate of Bernice P. Bishop, deceased, and being all of the land described in Transfer Certificate of Title No. 17,544 issued to said Grantor.

To have and to hold the same, together with all buildings, improvements, rights, easements, privileges and appurtenances thereunto belonging or appertaining or held and enjoyed therewith, unto said Grantee, his heirs and assigns, forever; Subject, however, to that certain Mortgage made by the Grantor to Bishop National Bank of Hawaii at Honolulu, dated March 13, 1941, filed in the Office of the Assistant Registrar of the Land Court of the Territory of Hawaii as Document No. 57283 and noted on said Transfer Certificate of Title No. 17,544, and also recorded in the Bureau of Conveyances at Honolulu in Book 1626, Page 166.

And said Grantor does hereby covenant with said Grantee, that he is lawfully seised in fee simple of the granted property and has good right to grant and convey the same as aforesaid; that said prop-

erty is free and clear of all encumbrances, except as aforesaid; and that he will and his heirs, executors and administrators shall warrant and defend the same unto said Grantee, his heirs and assigns, forever, against the lawful claims and demands of all persons.

And for the consideration aforesaid, Chiyono Fujino, wife of said Grantor, does hereby release, remise and quit-claim unto said Grantee, his heirs and assigns, forever, all of her right, title and interest, by way of dower or otherwise, in/and to the said granted property.

In witness whereof, said Grantor and his wife have [35] hereunto set their hands and seals this 21st day of March, A. D. 1941.

YOTARO FUJINO

(Also Known as)

YOOTARO FUJINO,

By /s/ TOKUICHI TSUDA,

By /s/ YASUO TSUTSUMI,

His Attorneys-in-fact.

CHIYONO FUJINO,

By /s/ TOKUICHI TSUDA,

By /s/ YASUO TSUTSUMI,

Her Attorneys-in-Fact.

Territory of Hawaii,

City and County of Honolulu—ss.

On this 21st day of March, 1941, before me personally appeared Hokuichi Tsuda and Yasuo Tsutsumi, to me personally known, who, being by me

duly sworn, did say that they are the attorneys-in-fact of Yotaro Fujino (also known as Yootaro Fujino), duly appointed under Power of Attorney dated February 20, 1941 recorded in Book 1633, Page 56, in the Bureau of Conveyances at Honolulu, T. H.; and that the foregoing instrument was executed in the name and behalf of said Yotaro Fujino (also known as Yootaro Fujino) by said Tokuichi Esuda and Yasuo Tsutsumi as his attorneys-in-fact; and said Tokuichi Tsuda and Yasuo Tsutsumi acknowledged said instrument to be the free act and deed of said Yotaro Fujino (also known as Yootaro Fujino);

And on this 21st day of March, 1941, before me personally appear Tokuichi Tsuda and Yasuo Tsutsumi, to me personally known, who, being by me duly sworn, did say that they are the attorneys-in-fact of Chiyono Fujino duly appointed under Power of Attorney dated December 23, 1940, recorded in Book 1633, Page 49, in the Bureau of Conveyances at Honolulu, T. H.; and that the foregoing instrument was executed in the name and behalf of said Chiyono Fujino by said Tokuichi Tsuda and Yasuo Tsutsumi as her attorneys-in-fact; and said Tokuichi Tsuda and Yasuo Tsutsumi acknowledged said instrument to be the free act and deed of said Chiyono Fujino.

/s/ ERNEST N. MURAKAMI,
Notary Public, First Judicial Circuit, Territory of
Hawaii.

[Endorsed]: Filed April 15, 1946. [36]

[Title of District Court and Cause.]

REPLY

To the Honorable Presiding Judge of the United States District Court for the Territory of Hawaii:

For his reply to Defendant's Answer heretofore filed herein, Plaintiff alleges and shows as follows:

I.

He admits the allegations contained in paragraph XXV of the Answer.

II.

He admits the allegations contained in paragraph XXVI of the Answer.

III.

He denies the allegations contained in paragraph XXVII of the Answer, except the portion thereof alleging that on March 21, 1941, Tokuichi Tsuda and Yasuo Tsutsumi, as attorneys-in-fact for Yotaro Fujino, purported to give, transfer and convey the said real property by a deed of warranty, a true and correct copy of which deed is attached as Exhibit "B" and made a part of this Answer, to Plaintiff. [38]

He denies the allegations contained in paragraph XXVII of the Answer to the effect that the deed executed on March 21, 1941, was executed "without other lawful authority," and that the deed was

executed by Tokuichi Tsuda and Yasuo Tsutsumi, as attorneys-in-fact for Yotaro Fujino, "contrary to their powers as set forth in" the Power of Attorney dated February 20, 1941 (Exhibit "D" attached to the Answer).

And in connection with the allegations contained in paragraph XXVII of the Answer, Plaintiff further alleges that Tokuichi Tsuda and Yasuo Tsutsumi, acting in good faith as attorneys-in-fact for Yotaro Fujino, in pursuance of the powers granted to them by virtue of the Power of Attorney dated February 20, 1941 (Exhibit "D" attached to the Answer), and pursuant to lawful and specific instructions given to them by the said Yotaro Fujino, executed the said deed on March 21, 1941 (Exhibit "B" attached to the Answer), and thereby gave, transferred and conveyed the real property described in said deed to the Plaintiff.

Further replying to the allegations contained in paragraph XXVII of the Answer, Plaintiff alleges that said deed dated March 21, 1941, was executed by said Tokuichi Tsuda and Yasuo Tsutsumi, as the attorneys-in-fact for said Yotaro Fujino, in good faith and pursuant to the lawful and specific instructions from the said Yotaro Fujino to execute and deliver said deed and to convey by way of gift said real property described in said deed to the said Plaintiff.

IV.

He denies the allegations contained in paragraph XXVIII of the Answer.

Further replying to the allegations contained in said paragraph XXVIII of the Answer, Plaintiff alleges that the [39] legal and equitable right, title and interest in and to the real property and the legal and equitable ownership of said real property became vested in the Plaintiff by virtue of said deed dated March 21, 1941, and that said Plaintiff has been and now is the real owner of said real property.

V.

He denies the allegations contained in paragraph XXIX of the Answer.

VI.

He denies the allegations contained in paragraph XXX of the Answer.

Further replying to the allegations contained in paragraph XXX of the Answer, Plaintiff alleges that the conveyance of said real property by virtue of said deed dated March 21, 1941, was intended as a bona fide gift inter vivos from said Yotaro Fujino to the Plaintiff; that said gift was completed and consummated without reservation of any kind, and that upon the execution and delivery of said deed said Plaintiff became the sole legal and equitable owner of said real property.

VII.

He denies the allegations contained in paragraph XXXI of the Answer.

Further replying to the allegations contained in paragraph XXXI of the Answer, Plaintiff alleges

that the conveyance of said real property by the said Yotaro Fujino, through his duly appointed attorneys-in-fact, was a bona fides transaction and that it constituted a bona fide gift of said real property from said Yotaro Fujino to the Plaintiff; and that said conveyance was not a sham, was not fictitious and was not intended to conceal or cloak any fact whatsoever; and that said conveyance [40] was not intended to conceal any beneficial ownership of said real property in Yotaro Fujino, or any other person.

VIII.

He denies the allegations contained in paragraph XXXII of the Answer and denies specifically that Plaintiff acted directly or indirectly for the benefit of, or on behalf of said Yotaro Fujino, at any time since March 21, 1941, with respect to said real property.

Further replying to the allegations contained in paragraph XXXII of the Answer, Plaintiff specifically denies that he is a national of a foreign country or a designated enemy country (Japan) within the purview of the Trading with the Enemy Act, as amended, and Executive Order No. 9095, as amended.

Further replying to the allegations contained in paragraph XXXII of the Answer, Plaintiff alleges that since March 21, 1941, Plaintiff has been and now is the only person entitled to said real property in law and in equity and that since March 21, 1941, said Yotaro Fujino has not had and does not now have any interest whatsoever in said real property.

Wherefore, Plaintiff prays that upon a full hearing hereof, Plaintiff be granted the relief prayed for in his Complaint or such other, further or different relief as to this Court may seem equitable, just or proper.

Dated: Honolulu, T. H., May 4th, 1946.

/s/ KANAME FUJINO,
Plaintiff.

SMITH, WILD, BEEBE &
CADES,

Attorneys for Plaintiff.

By /s/ E. H. BEEBE. [41]

Territory of Hawaii,
City and County of Honolulu—ss.

Kaname Fujino, being first duly sworn, on oath, deposes and says:

That he is the Plaintiff named in the above entitled Court and cause and is the person making the foregoing Reply; that he has read the same, knows the contents and that the same is true.

/s/ KANAME FUJINO.

Subscribed and sworn to before me this 4th day of May, 1946.

[Seal] /s/ FRANCES H. NAKAMURA,
Notary Public, First Judicial Circuit, Territory of
Hawaii.

My commission expires October 1, 1948.

[Receipt of Reply acknowledged.]

[Endorsed]: Filed May 6, 1946.

In the United States District Court for the
District of Hawaii

April Term 1947

Civil No. 704

KANAME FUJINO,

Plaintiff,

vs.

TOM C. CLARK, Attorney General of the United
States as Successor to the Alien Property
Custodian,

Defendant.

DECISION

J. Frank McLaughlin, Judge

Attorneys for Plaintiff:

Smith, Wild, Beebe & Cades, Bishop Trust Build-
ing, Honolulu, T. H.

Attorneys for Defendant:

John F. Sonnett, Assistant Attorney General;
Harry LeRoy Jones, Special Assistant to the At-
torney General; George B. Searls, Chief Trial
Attorney; William J. Conner, Attorney, Depart-
ment of Justice, Washington 25, D. C.; Ray J.
O'Brien, United States Attorney for the District
of Hawaii; George W. Jansen, Chief Trial Attor-
ney, Department of Justice, Washington, D. C.

This suit is founded upon Section 9 (a) of the
Trading with the Enemy Act (50 U.E.C. App.

Section 9 (a)) and has been brought by the plaintiff to recover six parcels of real property vested under the Act and Executive Order No. 9095, as amended, by the Custodian on December 3, 1943 (Vesting Order No. 2724; Fed. Reg. 16937).

From the evidence the following data is derived and recorded as the Court's

FINDINGS OF FACT

1. This Court has jurisdiction of the parties and of the subject matter (50 U.S.C. App. Section 9 (a)).

2. Plaintiff is a citizen of the United States and a resident of Honolulu, Territory of Hawaii.

3. Defendant is the Attorney General of the United States and as such is successor to the Alien Property Custodian (11 Fed. Reg. 1198).

4. On December 3, 1943, the Custodian vested title to six parcels of land in Honolulu. [44]

5. Plaintiff was the record owner of the land the title to which the Custodian vested.

6. At all times herein involved, Yotaro Fujino and Chiyono Fujino, parents of plaintiff, were residents, nationals, and subjects of Japan. In Japan Yotaro Fujino disposed of the scrap iron shipped there by his Hawaiian business enterprise and arranged for the shipment of cement to his company in Hawaii.

7. Prior to March 21, 1941, Yotaro Fujino was the record owner, as well as the true and beneficial owner, of this land.

In 1940 Yotaro Fujino, age 55, discussed with his Hawaiian attorney who was visiting Japan his Hawaiian business affairs. The strained international situation was a factor in this discussion. At this conference Yotaro Fujino perfected his plan to give his Hawaiian land to his only son, and to incorporate his business located thereon and to give his family shares therein in such a way that he could retain control of them and of their shares. Based upon this plan, he issued appropriate instructions to his attorneys in fact in Hawaii through correspondence with his business advisor, Seitaro Yamamoto.

In discussing his plans with his son, Yotaro Fujino told his son when he directed him to execute a power of attorney to the same two men who held a like power from his father that some day he would give the whole business in Hawaii to him, but that in the meantime he should go to school and prove himself and show that he can run the business.

8. On February 20, 1941, Yotaro Fujino executed in Japan a general and new power of attorney to Tokuichi Tsuda [45] and Yasuo Tsutsumi of Honolulu, by the terms of which he authorized his attorneys in fact, amongst other things, "to buy, take or lease and otherwise acquire, and to hold, sell, mortgage, hypothecate, pledge, lease and otherwise dispose of, and in any and every way and manner deal with real property, leaseholds and other interests in real property" (Plaintiff's Ex-

hibit E). Tsuda and Tsutsumi have acted under this and a prior similar power since 1935, a year in which Yotaro Fujino went to Japan to reside permanently. This new, 1941 power of attorney was executed because of the confusion arising from two nearly identical powers executed by him in 1935 prior to leaving for Japan, in one of which his first name was spelled "Yootaro."

9. At all times here involved Tsuda and Tsutsumi were also attorneys in fact under general powers of attorney for plaintiff's mother and for the plaintiff. As of the date of trial Tsuda and Tsutsumi still held unrevoked powers of attorney from the plaintiff, his father, and his mother.

10. For years prior to November 27, 1940, plaintiff's father, Yotaro Fujino, was the sole owner of a business known as the Oahu Junk Company and Oahu Lumber and Hardware Company. On November 27, 1940, the Oahu Junk Company, Ltd., was incorporated, and upon December 2, 1940, all of the assets of Yotaro Fujino's business enterprise, except the real estate here involved, were transferred by Yotaro Fujino, acting through his attorneys in fact, to Oahu Junke Company, Ltd., "in consideration of the * * * issuance to him of 790 shares of capital stock" of the corporation (Defendant's Exhibit No. 4). This stock was issued of [46] record at Yotaro Fujino's direction as follows:

Yotaro Fujino.....	238 shares
(Father)	
Chiyono Fujino.....	118 shares
(Mother)	

Kaname Fujino.....	200 shares
(Only son, plaintiff)	
Katsue Fujiaki	117 shares
(Daughter)	
Shizue Maneki.....	117 shares
(Daughter)	

At the same time the plaintiff, his mother, and each daughter executed promissory notes to Yotaro Fujino for the par value of the shares registered in their names. Yotaro Fujino required his wife, son, and daughters to execute these notes to him so that he could retain control over them and their stock in the corporation.

11. The real property here involved, except for a small parcel, was and is occupied by the business enterprise, whether as a sole proprietorship or as a corporation, as its principal place of business, and was and is necessary and indispensable to the conduct and operation of the business.

12. On March 13, 1941, Yotaro Fujino, while working out his plan to give his real estate to his son, through his attorneys in fact mortgaged to a local bank this real property for \$15,000, and the indebtedness has since been paid by the Oahu Junk Company, Ltd. (Plaintiff's Exhibit K.)

13. On March 21, 1941, the attorneys in fact of Yotaro Fujino purporting to act for him under the power of attorney dated February 20, 1941 (Plaintiff's Exhibit E) [47] executed a deed to the real estate here involved by which they purported to convey it to the plaintiff as a gift. The

deed was not delivered to the plaintiff until May, 1941, when he returned from Japan, and it was not recorded until May 19, 1941. Plaintiff endorsed for the bank his father's mortgage note at the time the deed was delivered to him.

14. Three months after the deed was delivered to plaintiff, at the suggestion of the attorneys in fact, rent was paid plaintiff by the corporation from the date of the deed. The rental figure of \$300 per month net was suggested by Tsuda and Tsutsumi and accepted without question by plaintiff. Plaintiff used the rental money to support himself, to help his sisters, and to care for his father's family obligations. In addition a tax liability of his father's—\$8,000—was paid by plaintiff through a transaction by which the corporation loaned plaintiff the money and credited the rent as it fell due against the loan; the \$8,000 was to be credited upon plaintiff's note to his father (Plaintiff's Exhibit P). Plaintiff knew nothing of the value of the land, nor the rental value thereof. He took no active part in the management of the corporation. The management of the business and the real estate was left entirely to the attorneys in fact, and plaintiff with regard to each did what he was advised to do by his father's attorneys in fact.

15. Although record title to the six parcels of land stood in plaintiff's name, he did not have or purport to exercise complete and absolute ownership of the property. Notwithstanding the deed, plaintiff's father, the grantor, has, through his

attorneys in fact and personally, [48] retained control and the beneficial ownership of the land. In holding the record title to the land, plaintiff has acted for and in behalf of his father and has been controlled by him.

Comment

This suit is in substance against the United States, and consequently the plaintiff must meet the terms and conditions under which the sovereign has consented to be sued. *Cummings vs. Deutsche Bank und Discontogesellschaft*, 300 U.S. 115; *Becker Steel Co. vs. Cummings*, 296 U.S. 74.

The plaintiff has failed to meet the burden of proving (1) that he has an "interest, right or title" to the real property (Section 9(a) of the Act) and that if he has, (2) he holds the same "for his own * * * and sole use and benefit." (Section 5(b) of the Act; Executive Orders No. 8389 and 9095, both as amended.) *Von Zedtwitz vs. Sutherland*, 26 F. (2d) 525; *Draeger Shipping Co., Inc., vs. Crowley*, 55 F. Supp. 906.

In the first place the plaintiff has no title to the real property. True his father, as part of his plan, admittedly intended to make a gift of it to him, but the means employed rendered the execution of his plan ineffective.

Under the laws of Hawaii (Rev. Laws 1945, Section 12757) powers of attorney for the transfer of real property must be recorded, otherwise the conveyance is not binding to the detriment of third

parties. Exhibit E was recorded, but it gave Yotaro Fujino's attorneys in fact no authority to give away any of his assets. The deed of March 21, 1941 (Exhibit H), is not binding upon the Custodian.

To authorize a gift of an asset by an agent, [49] the agent must have such a power expressly and clearly conferred. *Kaaukai vs. Anahu, et al.*, 30 Hawaii 226; *Brown vs. Laird*, 134 Or. 150, 291 Pac. 352, 73 A.L.R. 877, 884; *Bertelsen vs. Bertelsen*, 122 Pac. (2d) 130. See also 2 Am. Jr., "Agency," Sections 31, 145; 2 C.J.S. "Agency," Section 114, p. 1332; and *Meehem on Agency* (2d Ed.), Sections 783, 818.

Clearly "give, grant, bargain, sell, and convey" (Exhibit H) is not within the power "to hold, sell, mortgage, hypothecate, pledge, lease and otherwise dispose of" (Exhibit E). The argument that a gift is within the meaning of the phrase "and otherwise dispose of" for what is a gift but that which is not a sale or a mortgage, is not convincing. This catchall phrase adds nothing, for it refers to such undescribed methods of disposition as may have been omitted (but were not) and are in nature like those specifically enumerated. Exhibit E must be read as a whole, and thus read it is obviously a grant of—as it says—full and adequate power "to carry on and transact all my business in the Territory of Hawaii." A gift is not a business transaction.

So it is that that which grantor himself could have done, he did not give his agents the power to do, and as against the interests of a third party the grantor's unrecorded, relayed directions by letter and cable to his agents to do what they did do, were ineffective, and the deed conveyed no interest in or title in the land to the plaintiff.

But even assuming that the power of attorney be held to include the power to make a gift, plaintiff still is [50] not entitled to recover because of the provisions of Section 5(b) of the Act and Executive Orders issued thereunder, which he has been unable to surmount.

In keeping with the purposes of the Trading with the Enemy Act—to lessen the enemy's and increase our own ability to wage war successfully—*Josephburg vs. Markham*, 152 F. (2d) 644; *Silesian-American Corp. vs. Markham*, 156 F. (2) 793—it is permissible to look through and beyond the technicalities of the law of conveyancing to the realities. See *Helvering vs. Clifford*, 309 U.S. 331; *Losh vs. Commissioner*, 145 F. (2) 456; and *Commissioner vs. Buck*, 120 F. (2d) 775. Family arrangements are subject to close examination, and factual control is more significant than the niceties of legal title.

The evidence clearly discloses Yotaro Fujino's plan. He openly declared that he wanted to give members of his family shares in his business in such a way that he could still control it by controlling them. This he did most effectively by the stock transaction above described and found as

fact—fact incidentally as to which there is no dispute. The land upon which the business was operated was essential to the continued conduct of the business. By controlling the plaintiff as a son and an only son, and controlling him directly as to his use of his shares of stock, Yotaro Fujino indirectly but effectively silently controlled plaintiff's use and disposition of the land. Plaintiff dare not dispose of it or even set a rental figure himself lest he incur his father's displeasure and be read out of the family and out of the corporation. The evidence shows upon which side plaintiff's bread was buttered [51] and that he knew it, too. He would not dare move with respect to his title to the land contrary to his father's interest in the business, to which the land was most essential. Yotaro Fujino in point of fact controlled the plaintiff, thereby retaining the control, beneficial use, and enjoyment of the land in question.

In such a situation upon the date of vesting, the Custodian was justified in determining the plaintiff to be, despite his United States citizenship, one who in the national interest was to be treated as a national of a designated enemy country (Japan), and the property was validly vested under Sections 5(b) and 7(c) of the Act and Executive Orders issued thereunder.

Upon the facts found the following are the

Conclusions of Law

A. The Court has jurisdiction of the parties and of the subject matter. 50 U.S.C. App., Section 9—Trading with the Enemy Act.

B. Yotaro Fujino is an enemy alien and a national of a designated enemy country (Japan) within the meaning of Section 2 and 5(b) of the Trading with the Enemy Act, as amended, and Executive Orders Nos. 8389 and 9095, both as amended.

C. Plaintiff is a national of a foreign country within the meaning of Section 5(b) of the Act and Executive Orders Nos. 8389 and 9095, both as amended, in that he acted in behalf of or under the control of his father, Yotaro Fujino, a national of designated enemy country (Japan). [52]

D. Upon the date of vesting, the real property was:

1. Property "owing or belonging to or held for, by, on account of, or on behalf of or for the benefit of, an enemy" (Yotaro Fujino) not holding a license within the meaning of Section 7(c) of the Act, and

2. Property or an interest therein "owned or controlled by, payable or deliverable to, held on behalf of or on account of or owing to or which is evidence of ownership or control * * * by an enemy country or national thereof" (Yotaro Fujino—Japan) within the meaning of Section 5(b) of the Act and Executive Orders Nos. 8389 and 9095, as amended.

E. As against the United States or any third party, the March 21, 1941, deed of gift from Yotaro Fujino to the plaintiff is a nullity because the grantor's attorneys in fact had no power under

the February 20, 1941, power of attorney to give away an asset of the grantor's.

F. Plaintiff has no "interest, right or title" in the real property within the meaning of Section 9(a) of the Act, as amended.

G. The complaint should be and is hereby dismissed. An appropriate order approved as to form will be signed upon presentation.

Dated at Honolulu, Territory of Hawaii, April 22, 1947.

/s/ J. FRANK McLAUGHLIN,
Judge.

[Endorsed]: Filed April 22, 1947.

In the United States District Court for the
District of Hawaii

Civil No. 704

KANAME FUJINO,

Plaintiff,

against

TOM C. CLARK, Attorney General of the United
States as Successor to the Alien Property
Custodian,

Defendant.

JUDGMENT

This cause came on to be heard on the pleadings and proofs of the respective parties, whereupon, on consideration thereof, and the Court having filed

findings of fact and conclusions of law, it is now, on motion of Ray J. O'Brien, United States attorney for the District of Hawaii, one of the attorneys for the defendant:

Ordered, Adjudged, and Decreed, as follows:

1. Yotaro Fujino is an enemy alien and a national of a designated enemy country (Japan) within the meaning of Sections 2 and 5(b) of the Trading with the Enemy Act, as amended, and Executive Orders Nos. 8389 and 9095, both as amended.

2. Plaintiff is a national of a foreign country within the meaning of Section 5(b) of the Act and Executive Orders Nos. 8389 and 9095, both as amended, in that he acted in behalf of or under the control of his father, Yotaro Fujino, a national of a designated enemy country (Japan).

3. Upon the date of vesting, the real property involved in this action was: [54]

(a) Property "owing or belonging to or held for, by, on account of, or on behalf of, or for the benefit of, an enemy" (Yotaro Fujino) not holding a license within the meaning of Section 7(c) of the Act, and

(b) Property or an interest therein "owned or controlled by, payable or deliverable to, held on behalf of or on account of or owing to or which is evidence of ownership or control * * * by an enemy country or national thereof" (Yotaro Fujino — Japan) within

the meaning of Section 5(b) of the Act and Executive Orders Nos. 8389 and 9095, as amended.

4. As against the United States or any third party, the March 21, 1941, deed of gift from Yotaro Fujino to the plaintiff is a nullity because the grantor's attorneys in fact had no power under the February 20, 1941, power of attorney to give away an asset of the grantor's.

5. Plaintiff has no "interest, right or title" in the real property within the meaning of Section 9(a) of the Act, as amended.

6. The complaint should be and is hereby dismissed, with costs to defendant.

Judgment approved, dated June 5, 1947.

/s/ J. FRANK McLAUGHLIN,
United States District Judge.

Judgment rendered, dated June 5, 1947.

/s/ WM. F. THOMPSON, JR.,
Clerk.

Entered June 5, 1947.

Approved as to form.

SMITH, WILD, BEEBE & CADES,
Attorneys for Plaintiff. EHB

[Endorsed]: Filed June 5, 1947.

In the United States District Court for the
Territory of Hawaii

Civil No. 704

KANAME FUJINO,

Plaintiff,

vs.

TOM C. CLARK, Attorney General of the United
States, as Successor to the Alien Property
Custodian,

Defendant.

TRANSCRIPT OF PROCEEDINGS

In the above-entitled matter, held in the United
States District Court, Honolulu, T. H., on October
31, 1946, at 9:00 o'clock a.m.,

Before: Hon. J. Frank McLaughlin, Judge.

Appearances:

Eugene H. Beebe, Esq., of the law firm of Smith,
Wild, Beebe & Cades, appearing for the Plaintiff;

Ray J. O'Brien, Esq., United States Attorney,
appearing for the Defendant;

George W. Jansen, Esq., Chief Trial Attorney,
Claims Division, Alien Property Section, Depart-
ment of Justice, appearing for the Defendant;

John F. Alexander, Esq., Examiner-Attorney,
Alien Property Section, Department of Justice, ap-
pearing for the Defendant.

The Clerk: Civil No. 704, Kaname Fujino,
Plaintiff, versus James E. Markham as Alien
Property Custodian, Defendant; case called for
hearing.

The Court: Are the parties ready?

Mr. Beebe: In one sense, yes, your Honor. Perhaps Mr. Jansen has explained to your Honor the circumstances surrounding this case. We have agreed to go ahead with what evidence we have, with the understanding that at a later date we will make the arrangement regarding the testimony of Yotaro Fujino, the father of the Plaintiff, who presently lives in Japan.

Mr. Jansen: I might say with regard to that, if it please the Court, that the Plaintiff has indicated that he is anxious to take the testimony of Yotaro Fujino in Japan, that an effort was made to get him here for the trial to take his testimony, without success. I am not sure that the testimony of Yotaro Fujino is relevant or material to the issues of this case, so more than a week ago I requested the Plaintiff to at least give me a statement of what they expected Yotaro Fujino would testify to. I can't say, in advance of receiving that statement, what I would do about it. But if I could see the statement or be advised of what they expect him to testify to, there is at least a possibility that we might be willing to admit that if Yotaro Fujino were called and sworn, that he [60] would testify as they say he would, subject, of course, to any objections as to relevancy, materiality, and any other objections that we would have if he were here present in person. I don't know whether you have made any effort to do that or not, have you, Mr. Beebe?

Mr. Beebe: Mr. Murakami was to give me the data with reference to what he understood Yotaro Fujino would testify to. I have not received that. As your Honor will recall, I didn't return here until the third of October. Mr. Murakami has been on Maui on several occasions. Since that time, frankly, I do not believe that he is prepared—the last time I talked to Mr. Jansen, I didn't understand that there was any pressing need for him to have that immediately. I don't think I am wrong in that statement.

Mr. Jansen: I suggested that we should have it before we finished our present work, because it might obviate the necessity of arranging for a deposition later.

The Court: The expectation is that this case may take at least two or three days, and it may be that during that time Mr. Murakami may advise you as to what such a statement would consist of?

Mr. Beebe: That's right.

The Court: And maybe we can make some headway. Otherwise, we can go ahead with the witnesses that you have available, and if need be under the rules, take this man's deposition in Japan. [61]

Mr. Jansen: I might say, if it please the Court, that I am not authorized to consent or to stipulate to take his deposition in Japan. I don't even know whether it is possible under the present circumstances to take the deposition, but if it is, I have no objection to taking it after this present hearing is closed, assuming that it can't be obviated through the suggestion that I made. But I don't want to

be bound to any agreement to take his testimony.

The Court: Well, that is not your phase of the case anyway.

Mr. Jansen: That's right.

The Court: It is Mr. Beebe's witness.

Mr. Beebe: I didn't understand that he was in any way bound by anything that has transpired before.

The Court: Well, we will have to make some arrangement because we can't keep this case open forever.

Mr. Beebe: There is no question about that. Of course, I thought there would be no difficulty about taking his testimony in Japan. I learned to the contrary at the time of our first conference with Mr. Jansen and Judge O'Brien. He said that while he was in Washington efforts were being made, as I recall, to take testimony in Germany, and he was advised that there were no counselor officers, etc., and that that deposition could not be taken in Germany. I had anticipated that we could get together and take his testimony.

The Court: What is the barrier to bringing the man here? [62] Wouldn't General MacArthur let him come?

Mr. Jansen: I don't know, if it please the Court.

The Court: The possibility has been exhausted?

Mr. Jansen: Yes, your Honor.

The Court: Well, I think we all understand that we are going to go as far as we can in the case at the present time, and we will leave this matter that we have been talking about open and

we will discuss it further at the conclusion of the testimony of the present witnesses. But with that matter in abeyance, are the parties ready to proceed?

Mr. Jansen: Yes, your Honor. At this time I would like to point out to your Honor that as of the 15th of October, 1946, all of the functions of the Office of the Alien Property Custodian were transferred to the Department of Justice, to the Attorney General.

The Court: By Executive Order.

Mr. Jansen: And therefore I move that Tom C. Clark, Attorney General, as successor to the Alien Property Custodian, be substituted as Defendant in this case.

The Court: Do you happen to have the number of this Executive Order?

Mr. Jansen: I'm sorry, I do not.

Mr. Beebe: You can supply it at a later date so far as I am concerned.

The Court: I gather from semi-official publication that [63] that has occurred, and I think you, too, Mr. Beebe, are in agreement that that has occurred within the last 30 or 60 days.

Mr. Beebe: I understand that that is the case, if your Honor please.

The Court: And subject to having the Executive Order reference, I will allow the substitution, so that henceforth this case will be against the Attorney General as successor to the Alien Property Custodian.

Mr. Jansen: Yes, your Honor.

The Court: We are right back in the same strategic or technical position we were after World War I.

Mr. Jansen: Yes, your Honor.

The Court: Very well. This proceeding, Mr. Beebe, is jurisdictionally based on Section 9 of the Trading with the Enemy Act, as amended?

Mr. Beebe: Yes, your Honor.

The Court: Very well. You may make an opening statement, if you so desire, or call your first witness.

Mr. Beebe: I question the necessity of making the opening statement, if your Honor please, other than say or reiterate what your Honor has said, that this action is an action in equity brought under Section 9 of the Trading with the Enemy Act, as amended, brought by Kiname Fujino, who is in court here in the Territory. And we have the property involved, conveyed to him by his father acting through attorneys in fact here in [64] the Territory, and it was the subject of the vesting order, the number of which is set forth in the pleadings, the vesting order number being 2724.

I think first, if your Honor please, I will call Mr. Murakami.

The Court: Mr. Murakami, will you come over here? Mr. Jansen, unless perhaps Mr. Beebe has informed you, Mr. Murakami is a member of the bar, if that makes any difference to you.

Mr. Jansen: Yes, your Honor.

The Court: I think you should know that.

ROBERT KIYOICHI MURAKAMI

a witness in behalf of the Plaintiff, being duly sworn, testified as follows:

The Court: Will you state your full name?

The Witness: Robert Kiyochi Murakami.

The Court: Age?

The Witness: Forty-six.

The Court: Residence?

The Witness: 927 Tenth Avenue, Honolulu.

The Court: Occupation?

The Witness: Attorney at Law.

The Court: Citizenship?

The Witness: United States.

The Court: Exclusively? [65]

The Witness: Exclusively.

The Court: You may take the witness.

Direct Examination

By Mr. Beebe:

Q. Mr. Murakami, are you a graduate of any law school?

A. University of Chicago Law School.

Q. And when did you graduate? A. 1925.

Q. With what, if any, degree?

A. Bachelor of Laws.

Q. And you were admitted to practice here in the Territory when? A. 1926.

Q. Do you remember when?

A. I think it's March.

Q. And since that date have you been engaged in the active practice of law? A. I have.

(Testimony of Robert Kiyoichi Murakami.)

Q. In partnership with someone else or alone?

A. Now I'm in partnership with Masaji Marumoto; I have been since 1937.

Q. And prior to that time?

A. Prior to that time, from 1927, the middle I think it was, up until 1937, July 1st, I was in private practice alone.

Q. Prior to that time? [66]

A. Prior to that, since my graduation, I was associated with and I was working for the firm of Thompson, Cathcart and Beebe.

Q. You were with the firm of Thompson, Cathcart and Beebe for some time prior to the time that you were admitted? A. That's correct.

Q. And after?

A. That is correct; since I came back from the mainland I went into your office, Thompson, Cathcart and Beebe, Beebe's office.

Q. And do you speak Japanese?

A. Yes, I do.

Q. Read Japanese? A. Yes, I do.

Q. And have you made some study of the Japanese law? A. I have.

Q. Have you made any study of the Japanese law with particular reference to the descent of property? A. Somewhat, yes.

Q. Now, do you know a person by the name of Yotaro Fujino? A. Yes.

Q. When, would you say, that you first became acquainted with Yotaro Fujino?

A. I would say around 1927, 8, somewhere around there.

(Testimony of Robert Kiyoichi Murakami.)

Q. Did you know Yotaro's wife, Chiyono, as I recall her [67] name? A. Yes.

Q. That's spelled C-h-i-y-o-n-o?

A. That is correct.

Q. And when, do you recall, did you become acquainted with Chiyono?

A. A little later, somewhere, I should say, around 1930, '29-'30.

Q. I see. Now, what was the nature of your acquaintanceship with Yotaro Fujino, Mr. Murakami? A. I handled his legal business.

Q. From when to when, will you tell us?

A. I would say somewhere around 1928, '29, and well up to the time he left, and still continuing to some extent, I guess.

Q. Now, you mentioned the time he left. When, if you know, did Yotaro Fujino leave the Territory?

A. He left in 1935, I think it was.

Q. And at that time were you representing Yotaro Fujino? A. Yes, I was.

Q. And in what business was Yotaro Fujino engaged at that time?

A. In the business of junk dealer under the trade name of Oahu Junk Company, and also in the business of selling lumber and hardware under the trade name of Oahu Lumber and Hardware [68] Company.

Q. And did he have an established place of business at that time? A. Yes, he had.

(Testimony of Robert Kiyochi Murakami.)

Q. Where was that established place of business?

A. On North King Street. I think it was 1217 or so. I'm not sure about the number now—the same place where the Oahu Junk Company, Limited, now has the office.

Q. And are you acquainted with the descriptions of the property set forth in the petition in this case?

A. Yes, I am.

Q. Was that place of business about which you have just testified on the property or on the portion of the property that is the subject matter of this complaint?

A. The place of business is on portions of the property described in the vesting order of the petition.

The Court: Just for my practical orientation, is that property the property opposite that cemetery beyond Alakea Street on North King Street.

The Witness: No—on North King. That's the Honolulu Junk Company. The other one is on North King Street, on the makai side of the road just about opposite from the Union Supply Company, if you happen to know—it's past the canal after you pass the Palama Fire Station and past the canal and a little [69] further. It's on the lower side of King Street.

The Court: Thank you.

Q. (By Mr. Beebe): Now, at the time that Yotaro Fujino left for Japan, did he consult with you?

A. Yes, he did.

(Testimony of Robert Kiyoichi Murakami.)

Q. At the time he left, did he have what I recall we termed a "return permit"?

A. He did not have a return permit.

The Court: Immigration?

The Witness: Immigration re-entry permit.

Q. Re-entry permit. And he left when, did you say, in 1935?

A. I think it was February or thereabouts, early part of 1935.

Q. Do you know whether or not there was a reason that he didn't have a re-entry permit?

A. Yes, I discovered that when he disclosed to me about the fact that he did not come in as a legal—by legal means, an illegal entrant.

Q. By that you mean that he slipped off the ship some time early in the nineteen hundreds?

A. That's the admission that he made to me.

Q. I see. Now, after his return to Japan in 1935, did he ever return to the Territory of Hawaii?

A. He did. He came here the same year, I think, about six or seven months later.

Q. As a treaty—

A. Yes, as a treaty merchant.

Q. And remained here how long at that time?

A. About a month or so. I'm not so sure. But he didn't stay very long.

Q. Now, during the time prior to Mr. Fujino's return to Japan and during his short visit as a treaty merchant, did you talk over with him the business, and so forth and so on?

A. Yes, I did.

(Testimony of Robert Kiyochi Murakami.)

Q. Now, did you know a gentleman by the name of Seitaro Yamamoto? A. Yes.

Q. How do you spell Seitaro?

A. S-e-i-t-a-r-o; Yamamoto, Y-a-m-a-m-o-t-o.

Q. And who was Seitaro Yamamoto?

A. An employee of Mr. Fujino doing business in the Oahu Junk Company and advisor in that business.

Q. Do you know how long Seitaro Yamamoto was employed in the Oahu Junk Company?

A. All the time I knew Mr. Fujino he was an employee.

Q. And did I understand you to say that he was an advisor?

A. Yes, he was an advisor of Mr. Fujino in his business.

Q. Do you know whether Seitaro Yamamoto is living or dead? [71]

A. The information is that he is dead.

Q. Do you know approximately when he died and if you can tell us where?

A. Nineteen forty-one when he was away on a trip, away from Hawaii. I think somewhere in the Philippines or Hongkong.

Q. Do you know Tokuichi Tsuda?

A. Yes, I do.

Q. And do you know Yasuo Tsutsumi?

A. Yes, I do.

The Court: What was the first name of that last one?

The Witness: Y-a-s-u-o, T-s-u-t-s-u-m-i.

(Testimony of Robert Kiyoichi Murakami.)

Q. How long have you known Mr. Tsuda and Mr. Tsutsumi?

A. About the same length of time that I had known Mr. Fujino, because they were employees there and later became attorneys-in-fact and manager and assistant manager of the business enterprise.

Q. Do you know whether they are Hawaiian-born?

A. They are American citizens, born here.

Q. And what about Yamamoto?

A. Yamamoto is a subject of Japan, was a subject of Japan.

Q. Now, with reference to the reading and writing of Japanese, will you explain to the Court the relationship, if any, that there was between Tsuda, Tsutsumi and Yamamoto and the old gentleman, Fujino?

A. Writings that came in Japanese from Yotaro Fujino [72] to the Oahu Junk Company always, most always, were brought to me by Mr. Yotaro—rather Seitaro Yamamoto. And replies, as far as I know, were made from here, Oahu Junk Company, to Yotaro Fujino in Japan, were in Japanese and were written by Mr. Seitaro Yamamoto. Whatever was done in English here in the Territory in communications and other matters, Mr. Tsuda and Mr. Tsutsumi, both of them would act as attorneys-in-fact, and sometimes in business matters one or the other would sign and send letters out and attend to them as correspondence, documents.

(Testimony of Robert Kiyoichi Murakami.)

Q. Now, what was the reason, if you know, for that division?

A. Well, one thing is that Mr. Yamamoto knew more about Japanese and could write. My information and my knowledge is that Mr. Tsuda and Mr. Tsutsumi can write some but not sufficiently to write the letter form of the Japanese language to convey their ideas to Mr. Fujino in Japan. They would be able to understand somewhat the reading part of the Japanese language but not to the extent of writing a letter in the conventional letter-writing form of Japanese. That's why Mr. Yamamoto was doing that end of the business of correspondence.

Q. I see. Then do I understand that after Mr. Fujino, Yotaro Fujino, went to Japan he corresponded with the Oahu Junk Company in Japanese?

A. That is true.

Q. And then, if you were consulted, you were consulted [83] by Yamamoto, who would bring the letter up to you, is that correct?

A. That's in most cases. Once in a while Mr. Yamamoto will come with Mr. Tsuda with the letter and consult me, but in most cases Mr. Yamamoto came by himself with the Japanese letter if he had something to do with the business or other matter with Mr. Fujino in Japan. And if a letter came in Japanese, he brought that letter and consulted me.

Q. Now, did Yamamoto, Tsuda and Tsutsumi remain in the employ of the Oahu Junk Company after 1935?

(Testimony of Robert Kiyoichi Murakami.)

A. Yes, they were in the employ of the company.

Q. And did they stay about the place of business and run the business?

A. Yes, Mr. Tsuda and Mr. Tsutsumi were appointed attorneys-in-fact. I think it was on the day that Mr. Yotaro Fujino left for Japan.

Q. That was in the year 1935?

A. Nineteen thirty-five.

Mr. Beebe: I think right here, if your Honor please, I will introduce those original powers of attorney. (Showing some documents to Mr. Jansen.)

Q. Mr. Murakami, do you know whether Chiyono Fujino left at the same time with her husband in 1935?

A. I believe she left on the same boat.

Q. Now, you mentioned powers of attorney executed by Yotaro Fujino in 1935. Did you have anything to do, as you [74] recall, with the drafting of that power of attorney?

A. I think I drafted one with that name, Yotaro Fujino.

Q. Did you have anything to do with the drafting of one for Chiyono Fujino, if you recall?

A. My recollection is not clear on that but I think it was drafted somewhere else.

Q. Did you have anything to do with the drafting of a power of attorney for Yootaro, Y-o-o-t-a-r-o Fujino?

A. I think that it was drafted somewhere else.

Q. I see.

(Testimony of Robert Kiyoichi Murakami.)

Mr. Beebe: If your Honor please, at this time I'd like to introduce in evidence three powers of attorney; the first, dated February 12, 1935, signed by Yotaro, Y-o-t-a-r-o, Fujino, acknowledged before R. K. Murakami, and recorded in the registry of conveyances, liber 1357, at page 73, apparently on the 5th day of October, 1936.

The Court: Excuse me. That's Yotaro Fujino's power of attorney to whom?

Mr. Beebe: To Tokuichi Tsuda and Yasuo Tsutsumi. A second one, from Yootaro Fujino, Y-o-o-t-a-r-o, Fujino, to Tokuichi Tsuda and Yasuo Tsutsumi, dated the 12th day of February, 1935, signed by Yootaro Fujino; acknowledgement taken before Maltbie Holt, recorded in the registry of conveyances in the Bureau of Conveyances on the 1st of March, 1935, in liber 1270, on pages [75] 42-43. And one from Chiyono Fujino to Tokuichi Tsuda and Yasuo Tsutsumi, dated the 12th of February, 1935, signed in Japanese characters, Chiyono Fujino, before Maltbie Holt, recorded in the Bureau of Conveyances on the 1st of March, 1935, in liber 1270 on pages 44 and 45.

The Court: And the other was to the same two people?

Mr. Beebe: Or, yes, your Honor.

The Court: That second one by Yootaro Fujino, that was recorded, too?

Mr. Beebe: Yes, your Honor, it was recorded.

The Court: I think you may have mentioned it but I didn't catch it.

(Testimony of Robert Kiyoichi Murakami.)

Mr. Beebe: Yes, the 1st of March, 1935, in liber 1270, pages 43-43. I'm sorry to say that we haven't photostatic copies. I have just talked to Mr. Jansen, and with the Court's approval we might at a later date withdraw these originals and have photostatic copies made and substitute the photostatic copies in the record and furnish Mr. Jansen with a copy.

Mr. Jansen: That is agreeable.

The Court: Very well. And you are offering these in evidence and there is no objection?

Mr. Jansen: No objection.

The Court: Very well, Mr. Clerk, they become—

The Clerk: "A," "B" and "C" in the order offered.

The Court: "A," "B" and "C" in the order offered. [76]

(Plaintiffs Exhibits "A," "B" and "C" were received in evidence.)

[Plaintiff's Exhibits A, B and C set out on pages 459 to 467.]

Q. (By Mr. Beebe): Now, Mr. Murakami, subsequent to the giving of these powers of attorney, known as "A," "B" and "C" in the record, do I understand that Tsutsumi and Tsuda and Yamamoto would come into the office when various letters were received? A. That is true.

Q. And were also exhibited to you by either Yamamoto or Tsuda or Tsutsumi during the period of time from 1935, we will say, on down to 1940?

A. Yes.

(Testimony of Robert Kiyoichi Murakami.)

Q. Did you, prior to 1935, see Yotaro Fujino write?

A. I wouldn't say that—before that, not very often, when he was here he may have written something in my office or signed something, but before 1935 not very often anyway.

Q. Well, when letters were brought in to you, did you know enough about Yotaro Fujino's handwriting to recognize whether or not those letters were in his handwriting in Japanese?

A. Yes, I could recognize that.

Q. Now, prior to the time Yotaro Fujino left for the first time, during the time he was here in 1935 as a treaty merchant and thereafter, did you have any conversations or see any letters written by Yotaro Fujino regarding the incorporation of his business, known as Oahu Junk Company and the [77] other name that you have given us?

A. Yes.

Q. Perhaps that question was a little bit premature. Prior to 1945, how was the Oahu Junk Company operated; that is, as an individual, as a corporation, or as a co-partnership?

A. In 1945?

Q. 1935 to 1940.

A. In 1940? It was in individual proprietorship prior to November 27, 1940.

Q. And by that you mean what?

A. Mr. Fujino operated individually.

Q. As Aahu Junk Company?

A. Yes, under the trade name of the Oahu Junk

(Testimony of Robert Kiyochi Murakami.)

Company, and also as I said, under another trade name insofar as his lumber and hardware business was concerned, under the trade name of the Oahu Lumber and Hardware Company.

Q. And what took place in November of 1940?

A. The business of Yotaro Fujino was incorporated and the sole proprietorship ceased and a corporation was organized.

Q. Did you have anything to do with the incorporation?

A. Yes, I was the one who fixed up all the papers and I had the papers drawn and filed with the Treasurer's Office and consulted them and they consulted me in meetings and all transactions in connection with the corporation.

Q. When, if you recall, was the question of the corporation [78] first brought up and by whom?

A. Originally I think in some very casual way, not too seriously, but before Mr. Fujino left in 1935, he mentioned about it. We talked about the property and necessity of incorporating.

Q. When was it next brought up?

A. When he came back here.

Q. That was——

A. In the same year, for a short time.

Q. And next when was it brought up?

A. Either 1938 or '39. Anyway, seriously in 1939, the latter part.

Q. Nothing, however, was done in 1939 about the physical act of incorporating? A. No.

(Testimony of Robert Kiyochi Murakami.)

Q. When was it next brought up, if there was a next time?

A. In Japan when I was there on a vacation trip in 1940.

Q. When did you go to Japan in 1940, Mr. Murakami?

A. In the latter part of March of 1940. I left here with my family and I think I reached there about the first of April, 1940.

Q. And remained in Japan for how long?

A. Until the latter part of July when I came back here.

Q. Now, while you were in Japan, did you see Yotaro Fujino? [79]

A. Yes, I did.

Q. For how long a period of time, would you say, all told?

A. All told I would say at least four, five days in a stretch in April, and then a couple of times again later on before, just before I left Japan in July.

Q. Now, was the matter of incorporation of Oahu Junk Company, the matter of the real property owned by Yotaro Fujino and other matters, taken up with Fujino at that time? A. Yes.

Q. Will you tell the Court exactly the matters that were taken up with Yotaro Fujino during the time of your visiting Japan?

A. The matters taken up were, first, the matter of incorporating the business of Mr. Fujino here in the Territory, and the dealing of the disposition

(Testimony of Robert Kiyoichi Murakami.)
of the property here in the Territory belonging to Mr. Fujino.

Q. By that, what do you mean?

A. As to what he wanted to do, what he wished to do and hoped to do about his property, his business, real property and all other property which he had in the Territory.

Q. Was the matter of taxes taken up with him and explained to him, etc.?

A. That is correct.

Q. Will you tell the Court at least—well, about that?

A. Discussed with him the matter of gift tax and the [80] inheritance tax, if he should die all of a sudden without any provision made, and as to the gift tax exemptions that might be taken advantage of from year to year if gifts were made to his children from time to time.

Q. If gifts were made to his children, is that your language? A. Yes.

Q. Go ahead. I'm sorry.

A. And the amount of the inheritance tax that probably the estate would have to pay if he just died without making provision during his lifetime. And the advantage of the incorporated form of business enterprise as compared to proprietorship, especially in the matter of making transfers. And how easy it would be when one dies—I explained the advantages of a corporate set-up as against the individual set-up. And the matter of, in his case, the matter of inheritance and where the property

(Testimony of Robert Kiyochi Murakami.)
would go; and under the Japanese law, as I understood it, and under our laws in the Territory. And told him about the fact that as far as real property was concerned, probably it will go under our laws to his children, but as far as the personal property was concerned I was of the opinion that it probably would go according to the law of the domicile, and Mr. Fujino himself had not been, anyway at that time, already a domicile of Hawaii. He had already left for Japan. So [81] everything would go according to the law of Japan, and that knowing that he had two—let's see—two girls here, one of them already married, the other one contemplating marriage; and knowing also that the son, the only son, was not a Japanese national, that therefore he would not inherit according to the laws of Japan, that the property here, that is, all the property here he had, the big business he had in Hawaii would probably—even that personal property—would go to someone in Japan that has no direct relation with him, that is not his children but some other collateral heirs. And explained to him that under all those circumstances that some method of disposition should be devised by him while he was hale and healthy.

Q. Now let's right here clear up the family situation. There were how many children in the family?

A. Three children, two girls and one boy, Kaname.

(Testimony of Robert Kiyoichi Murakami.)

Q. And do you know where those children were born? A. All born in the Territory.

Q. And, as I recall, you said one of the girls had already married? A. Yes.

Q. And was she residing here in the Territory in 1940? A. That's true.

Q. The other girl, where was she residing?

A. In the Territory.

Q. And where was Kaname at that time? [82]

A. Kaname was then in Japan.

Q. I see. Then under the laws of Japan who inherited upon the death of a father with reference to girls and boys?

A. Normally the eldest child will get most of it, practically all of it under the law of Primogeniture.

Q. The eldest child? A. Eldest boy.

Q. The eldest boy? In this case, if there is only one boy, what would happen?

A. One boy, well, he'd get all.

Q. I see. Sorry to have interrupted you, but will you go ahead now with your end of the discussion or your end of the explaining so far as Yotaro Fujino is concerned.

A. Well, as I was trying to tell you, as stated just now, under normal circumstances the boy will get it, Kaname will get it all. But under the circumstances that Mr. Fujino and his son—Kaname being expatriated, having been expatriated, was not on the family record and was no longer a son of of the Fujino family, in other words, he was entirely foreign, and therefore my way of interpret-

(Testimony of Robert Kiyoichi Murakami.)

ing the Japanese law was that Kaname would get nothing. And the girls, as they marry out, then they no longer would be heirs or they wouldn't inherit Mr. Fujino's property but some collateral heir, probably a nephew or somebody else would inherit his property.

Q. Now, you have mentioned the family record. I wish [83] you'd explain what you mean in connection with your mentioning the family record there, Mr. Murakami.

A. Well, the Japanese system is, the family is the unit, and in Mr. Fujino's case, family's case, he was the head of the family.

Q. Now, what do you mean by that?

A. Well, he was, well, the head of the family.

Q. Well, you said in Mr. Fujino's case. Now we are dealing with two.

A. Well, Mr. Fujino's family in this case.

The Court: The father's case?

The Witness: The father's case.

Q. The father was the head of the family and he was——

A. Yes. And Kaname and the two girls were originally in the family record as being the children of the head of the family. And normally if nothing had been done, if nothing had been done, Kaname Fujino upon Yotaro Fujino's death would inherit most, if not all, of the property belonging to Yotaro Fujino, as to one who would succeed and become the next head of the family. But Kaname, having expatriated and having left the family by

(Testimony of Robert Kiyoichi Murakami.)

process of law, he was no longer in the Yotaro Fujino family, and therefore would not inherit, would get nothing. The same with the daughter who had already married and had married into some other family. And the next daughter, the only other child remaining, was the younger daughter, of course [84] was older than Kaname, who was about to get married here in Honolulu. So we discussed, Mr. Yotaro Fujino and I discussed the eventuality of his dying and what would happen to his property. I was not concerned too much about what he had in Japan but with what he had here in the Territory. And we discussed about the disposition of that and the incorporation of the business here in the Territory.

Q. Now, was it agreed at that time that the business should be incorporation?

A. Yes, it was, that is, after discussion, long, lengthy, pro and con and all that; he said, I think that's the best way, we'll have the business incorporated.

Q. Then was the question of how the shares should be issued talked over with him, and was it agreed as to how the shares of the corporation should be issued after incorporation?

A. Not the exact proportion; only what was discussed with me was along this line. He indicated a desire to have the business incorporated and to have, to give to his children a substantial holding, and inquired of me how he could more or less keep tab or keep some sort of some measure of control

(Testimony of Robert Kiyoichi Murakami.)

over those shares that he is going to give to his kids, to his children. I told him that, well, the only way is that if you give you can let them pay for it, take a note back. And, as I explained before, if you want to you can give them four thousand dollars a year, or so forth, so that you had, they'd have the [85] exemptions under the gift tax law, and you can do that; or you can hold it and cancel their note whenever you felt like it. That's one way of keeping some measure of control.

Q. Now, was there any agreement at that time as to how this would be done, that is, did he say we'll do it this way, or was that just left tentative and you explained the various things to him?

A. That was tentative.

Q. I see. And at any time was there agreement between you and Yotaro while you were in Japan, or did that come along later?

A. That was not a definite instruction to me to make so many shares to somebody. There was no such definite instruction.

Q. At that time?

A. Not at that time.

Q. I see. Now, was the question discussed as to whether or not the real estate that he owned should be included in the corporate set-up, or how was the real estate to be handled, or how was it discussed?

A. His idea was that he didn't want to have the real property in the corporation, that he wanted—he said—the way he put it was that that is for Kaname Fujino, not to put that in the corporation;

(Testimony of Robert Kiyoichi Murakami.)

in other words, not to incorporate the real property, or rather to put his part of the assets of [86] the corporation.

Q. Now, you returned to the Territory when?

A. In July 23rd, I believe it was, 1940.

Q. Might I ask one question before we proceed? Have you explained or told us everything that took place between you and Yotaro Fujino in Japan with reference to the property and incorporation, as to taxes, gift taxes, etc.? I may have interrupted your train of thought.

A. Well, I don't know whether I told you everything, but I know we discussed almost everything from inheritance tax, loan and gift tax, and specific exemption and annual exemption of the donees, and the fact that probably he will have to pay even a federal and state tax, and with the amount of property that he had, and the Territorial inheritance tax, and went into his business and the disposition of his property upon his death, and other things pretty thoroughly. I may have forgotten something. I don't know.

The Court: I'm just wondering how old the father was about this time.

The Witness: Not too old. He is possibly now over sixty anyway. At that time he was in the middle fifties, I should say; a small man and looks rather young. He doesn't look too old but I will say around the middle fifties at that time.

Q. Now, you returned to the Territory, as I recall it, in July of 1940? [87]

A. That's true.

(Testimony of Robert Kiyoichi Murakami.)

Q. After that time did you deal with either Tsutsumi, Tsuda or Yamamoto with reference to incorporation, or did you just go ahead and start drafting papers?

A. No, we had discussions and conferences with Tsutsumi. Tsuda and Yamamoto, myself, all had several conferences, I'm sure.

Q. And did you finally——

A. Beg pardon?

Q. Did you finally draw up articles of incorporation, etc.?

A. Yes.

Q. Do you happen to have in your files the articles of incorporation?

A. I have just ordinary copies, not certified copies, I think in my file.

Mr. Beebe: May we take a brief recess?

The Court: We will take a brief recess at this time.

(A short recess was taken at 10:00 a.m.)

After Recess

The Court: You may proceed.

Q. (By Mr. Beebe): Mr. Murakami, directing your attention to document consisting of one, two, three, four, five, six, seven pages labeled or having on the face thereof, "In the Office of the [88] Treasurer of the Territory of Hawaii, in the Matter of the Incorporation of Oahu Junk Company, Ltd., Articles of Association," and another document attached thereto having on its face "In the Office of the Treasurer of the Territory of Hawaii, in the Matter of the Incorporation of Oahu Junk Com-

(Testimony of Robert Kiyoichi Murakami.)

pany, Ltd., Affidavit of Incorporation," I will ask you if these are the articles of association of the corporation Oahu Junk Company, Ltd., that you have just been testifying about? (Handing a document to the witness.)

A. This is the office copy of the original, original documents which were filed in the Territorial Treasurer's Office.

Mr. Beebe: I'd like to offer these articles in evidence, if your Honor please, with the understanding with Mr. Jansen that they will be compared or verified.

Mr. Jansen: We have no objection to the use of a copy, and we'd like the opportunity to verify it before it is filed.

The Court: Very well, subject to that understanding the document may become the Plaintiff's exhibit.

The Clerk: "D."

(Plaintiff's Exhibit "D" was received in evidence.)

[Plaintiff's Exhibit "D" set out on pages 468 to 478.]

Mr. Beebe: I don't see any necessity of encumbering the record with the by-laws. There doesn't seem to be anything in the by-laws that touches one way or another on this. [89]

Q. (By Mr. Beebe): Now, when, do you recall, were those articles filed under our law; when did the corporation become existent?

(Testimony of Robert Kiyoichi Murakami.)

A. If I am not mistaken, on the same day, November 27, 1940.

Q. I see.

A. That was the day it was executed; I believe it was filed the same day and maybe the next day, I'm not sure.

Q. Now, pursuant to those articles of incorporation, was stock issued? A. That is true.

Q. Was stock issued to Kaname?

A. I'm not sure about that now because the way I worked this particular corporation up, we had organized a thousand dollar corporation, to set the corporate set-up first, and then to transfer out; the assets came in immediately after the incorporation. And I'm not sure whether or not Mr. Kaname Fujino was one of the incorporators. He may have been, now. I'll have to refresh my memory.

Q. Was the capital increased later?

A. Yes, soon thereafter, a few days, a few days thereafter.

Q. And did Kaname later then become a shareholder or stockholder in the corporation of the Oahu Junk Company, Ltd.? A. Yes.

Q. Did the two daughters also become stockholders in the [90] corporation at a later date?

A. I believe the two daughters were original, were in the original list of the incorporators.

Q. Their names are what?

A. Beg pardon?

Q. The daughters' names?

A. Katsue Fujieki and Shizue Maneki.

(Testimony of Robert Kiyoichi Murakami.)

Q. Will you spell both of those names?

A. K-a-t-s-u-e F-u-j-i-e-k-i and S-h-i-z-u-e M-a-n-e-k-i.

Q. And you mentioned in your conversation with the old gentleman, Yotaro, in Japan the fact that the stock could be given outright or the stock could be given and a note taken back, etc. How was this matter handled at the time the stock was issued to the three children, that is, Kaname and the two girls?

A. When the stock was—the capital stock was increased for the expressed purpose of taking over the entire personal, that is, assets exclusive of real property, of Mr. Fujino's business, and I believe it was 790 shares of capital stock was the consideration for the transfer of the business assets of Mr. Yotaro Fujino to the corporation, that is, assets not including the real property. The shares were issued at the request of Mr. Yotaro Fujino through his attorneys-in-fact. I think it was 240 to Yotaro Fujino and 200 to Kaname Fujino, 117 apiece to Chiyono Fujino and Katsue Fujieki [91] and Shizue Maneki, making 790, if I am not mistake. That represented in the consideration for the transfer, as I said, of the assets of the business, assets of Yotaro Fujino doing business as the Oahu Junk Company and Oahu Hardware, Oahu Lumber and Hardware Company, to the corporation exclusive of the real property. Stocks were issued as per instructions to these, to the five members of the Fujino family. And as to the three children, that is,

(Testimony of Robert Kiyoichi Murakami.)

Kaname Fujino, Katsue Fujieki and Shizue Maneki, promissory notes were taken back by the old gentleman, Yotaro Fujino, \$20,000 for Kaname, \$11,700 each for the two daughters.

Q. Now, tell the Court why that was done?

A. That was as per—in according with the instructions with the Oahu Junk Company Mr. Yamamoto had and revealed to the meeting, to the conference, that the old gentleman wanted to have the notes from the children.

Q. I see.

A. And that was also passed at the directors' meeting, I believe, whereby the directors approved the pledging of the shares for the indebtedness from each of the children to Yotaro Fujino.

Q. Was the real property conveyed to the corporation or just the personal property formerly a part of Oahu Junk Company?

A. Just the personal property.

Q. I see. Now, at or about that time were new powers [92] of attorney obtained, if you know, from Chiyono and Yotaro Fujino?

A. Soon thereafter.

Q. Why, if you know, were new powers of attorney obtained when we have in the record as Exhibits "A," "B" and "C" powers of attorney issued by the father and mother of Kaname in 1935?

A. In order to consummate the rest of the transaction in connection with the corporation, and one of the remaining transactions was the matter of se-

(Testimony of Robert Kiyoichi Murakami.)

curing a portion or giving security for an existing debt which Mr. Yotaro Fujino had with the Bishop National Bank. To explain that further, the corporation in taking over the personal property and business of Yotaro Fujino assumed the liability set forth in the bill of sale. Among the liabilities were a few notes, I think one or two notes to the—unsecured notes to the Bank of Bishop, and I think there was a mortgage note for the balance of \$1,500, a total indebtedness to the bank being in round figures \$20,000. And with arrangements with the bank a mortgage was to be given on the real property of Yotaro Fujino in connection with the incorporation of the business, inasmuch as the real property was not turned over to the corporation. And also the power of attorney, new powers of attorney became necessary in connection with the giving of the mortgage because we discovered at about that time that Mr. Fujino had several pieces of property, real property, some of which were in his name of Yotaro, [93] Y-o-t-a-r-o, and some in his name as Y-o-o-t-a-r-o. And I believe one piece was a land court, was a land court title, which was in the name of Y-o-o-t-a-r-o. And we came across embarrassing situations where we had two powers of attorney, both dated the same day, and one was Y-o-o-t-a-r-o and the other one was Y-o-t-a-r-o. And in order to make the mortgage covering all the property to two different names, and also in connection with the transfer of the property to Kaname Fujino, subject to the mortgage, we had to get a

(Testimony of Robert Kiyochi Murakami.)
new power of attorney from Mr. Yotaro Fujino in Japan, and also from his wife Chiyono Fujino.

Q. Did you prepare those powers of attorney?

A. I believe the one signed by, sent to Yotaro Fujino in Japan, was prepared in your office by the bank.

Q. Do you know approximately the time that that was prepared?

A. About in December first, the middle part of December.

Q. What year?

A. 1940. And I think the other one to Chiyono was prepared in my office.

(Mr. Beebe shows two documents to Mr. Jansen.)

Mr. Beebe: At this time, if your Honor please, I'd like to offer in evidence the power of attorney from Yotaro, Y-o-t-a-r-o, Fujino, also known as Yeotaro Fujino, to Tokuchi Tsuda and Yasuo Tsutsumi, the same being dated the 20th of February, [94] 1941, acknowledged before Charles H. Stephan, S-t-e-p-h-a-n, Vice Consul of the United States, Service No. 732. It is document No. 57281, Assistant Registrar of the Land Court, filed March 17, 1941, in the Land Court. And the second document, power of attorney from Chiyono Fujino, wife of Yotaro Fujino, alias Yootaro Fujino, to two named persons, Tokuchi Tsuda and Yasuo Tsutsumi, dated the 23rd of December, 1940, acknowledged before David Thomasson, T-h-o-m-a-s-s-o-n, Vice Consul of the United States, on the 23rd of December, 1940.

(Testimony of Robert Kiyochi Murakami.)

The Court: Any objection?

Mr. Jansen: No objection.

The Court: Very well, the documents may be received as Plaintiff's exhibits.

The Clerk: "E" and "F."

(Plaintiff's Exhibits "E" and "F" were received in evidence.)

[Plaintiff's Exhibits "E" and "F" are set out on pages 479 to 487.]

Mr. Beebe: Yotaro is "E," Mr. Thompson?

The Clerk: Yes, Mr. Beebe.

Q. (By Mr. Beebe): Now, you have mentioned, Mr. Murakami, an indebtedness of some \$20,000, as I recall, to the Bank of Bishop? A. Yes.

Q. Now, you mentioned also the fact that, as I recall, a mortgage in the amount of \$15,000 was given to the bank.

A. Well, that was to secure a portion of that pre-existing [95] indebtedness of Yotaro Fujino which went with the business and which was assumed by the newly organized corporation.

The Court: Let me get that clear. There was an existing mortgage which the corporation assumed for \$15,000?

The Witness: No.

The Court: Or was this mortgage—

The Witness (Interposing): I would say this—at the time of the incorporation and the transfer of the business from the individual Fujino to Oahu Junk Company, Ltd., the indebtedness of Yotaro Fujino to the Bank of Bishop amounted to \$20,000, more or less. That indebtedness was assumed by

(Testimony of Robert Kiyochi Murakami.)

the corporation as part of the whole transaction. Of that \$20,000, \$1,500 was secured debt to the Bank of Bishop, only \$1,500. And \$18,500 was not secured. And so the bank wanted some more. The effect was, after the conference—and the mortgage only covered one or two pieces of real property belonging to Yotaro Fujino—now, since the corporation was going to take over but didn't take over the land, the bank wanted to have its indebtedness secured to a bigger extent, and the final analysis was they wanted, they took \$15,000 covering all of the land that belonged to the old gentleman.

Mr. Beebe: I'd like at this time, if your Honor please, to offer in evidence a document purporting to be a mortgage made the 13th day of March, 1941. And I might say that the typewritten December, 1940, is stricken out. (Showing a document to the Court.) From Yotaro Fujino, also known as Yootaro [96] Fujino, whose wife's name is Chiyono Fujino, of Honolulu, and so forth, called a "Mortgagor," and Bishop National Bank of Hawaii at Honolulu, a national banking association, and so forth, "Mortgagee," mortgage purporting to be in consideration of \$15,000, the same being signed by Yotaro Fujino and Chiyono Fujino, by Tokuchi Tsuda and Yasuo Tsutsumi as attorneys-in-fact, being duplicate document number 57283 in the assistant registrar of the Land Court, and also bearing a stamp notation also recorded in the Bureau of Conveyances in Liber 1626, pages 166-172.

(Testimony of Robert Kiyochi Murakami.)

The Court: I take it there is no objection.

Mr. Jansen: No objection.

The Court: That therefore, becomes Plaintiff's exhibit——

The Clerk: "G."

(Plaintiff's Exhibit "G" was received in evidence.)

[Plaintiff's Exhibit "G" set out on pages 488 to 500.]

Q. (By Mr. Beebe): Do you know where that document was prepared, that exhibit "G" to which I have just referred? A. The mortgage?

Q. Yes.

A. That's the bank mortgage, and my knowledge is that it was prepared in your office.

Q. Now, subsequent to the time set forth in the two powers of attorney shown in the record as Exhibits "E" and "F," was the conveyance of the property described in Petitioner or [97] Plaintiff's Exhibit "G" made to Kaname Fujino, the Plaintiff in this case? A. Yes.

Q. And——

The Court (Interposing): Just a minute. I missed that. Prior to this mortgage, this land, or subsequent?

Mr. Beebe: I hope I didn't say prior.

Mr. Jansen: No, subsequent.

Q. (By Mr. Beebe): Who, do you know, prepared a deed, if such a deed was prepared?

A. Prepared in my office by myself.

(Testimony of Robert Kiyochi Murakami.)

(Mr. Beebe shows a document to Mr. Jansen.)

Mr. Beebe: At this time, if your Honor please, I'd like to offer in evidence a deed from Yotaro Fujino, also known as Yootaro Fujino, whose wife's name is Chiyono Fujino, Grantor in consideration, purporting to be One Dollar; the conveyance being Kaname Fujino; the same being executed on the 21st day of March, 1941, by Yotaro Fujino, also known as Yootaro Fujino, by Tokuichi Tsuda and Yasuo Tsutsumi, his attorneys-in-fact, and Chiyono Fujino, by Tokuichi Tsuda and Yasuo Tsutsumi, her attorneys-in-fact; the acknowledgement being taken before Ernest N. Murakami; the same being a true copy of document number 58404, received in the registry of the Land Court on May 19, 1941, from which Certificate of Title No. 24074 has [98] been issued; the slip on the front thereof having a stamp notation, also recorded in the Bureau of Conveyances in Liber 1638, pages 423-427; signed by Oliver R. Aiu, A-i-u, assistant registrar of the Land Court.

Mr. Jansen: Now, with regard to this exhibit, if it please the Court, we do not deny that the attorneys-in-fact, Tsuda and Tsutsumi, actually executed this deed, that is, actually signed the deed, and that it was actually filed, and that this is the deed which was executed and signed and filed. But we do not want that admission to be construed as admitting that they had authority to do so. That we deny.

(Testimony of Robert Kiyoichi Murakami.)

And if that is essential the admissibility of the document, we would object on that ground. As to it being the actual document signed and executed by the attorneys-in-fact and filed, we do not object on that ground. On the question of authority, we do not wish to be construed as conceding the authority of the attorneys-in-fact to execute the deed.

Mr. Beebe: I am perfectly willing that it be received with that understanding, that is, that it in no way bars them from that contention.

The Court: All right, that, therefore, becomes Plaintiff's Exhibit——

The Clerk: "H."

(Plaintiff's Exhibit "H" was received in evidence.)

[Plaintiff's Exhibit "H" set out on pages 501 to 509.]

Mr. Beebe: I think that is all, Mr. Jansen.

The Court: Very well, you may cross-examine.

Cross-Examination

By Mr. Jansen:

Q. Mr. Murakami, how long have you been practicing in Honolulu? A. Since 1926.

Q. You are engaged, I assume, and have been during all that time in the general practice of law?

A. That is true.

Q. Now, am I correct in assuming that you are authorized to testify regarding the confidential communications between you and your client, Yotaro Fujino?

(Testimony of Robert Kiyoichi Murakami.)

A. I have the authority of the attorneys-in-fact. I haven't been able to communicate with Mr. Fujino.

Q. You mean the only authority that you have to disclose what ordinarily would be privileged is authority that you have received from the attorneys-in-fact? A. That is true.

Q. You consider that sufficient?

A. Under the circumstances I have considered it that that is their desire to disclose what happened. I have considered it sufficient.

Q. Now, you had known Mr. Yotaro Fujino for how long?

A. I would say since about 1927, '28, around there.

Q. And do you know how long prior to that time he had lived and done business in Honolulu? [100]

A. Only from hearsay, but I knew that he had been in business for many, many years before that.

Q. Many years prior to 1927? A. Yes.

Q. Now, since 1927 did you handle all of his legal business for him?

A. Probably from 1927 to up about 1930 I may not have handled it all, just small bits of business probably. But from around 1930, I believe I have been doing all of his work.

Q. I assume that until he left Honolulu he consulted with you from time to time with regard to various problems of the business? A. Yes.

(Testimony of Robert Kiyoichi Murakami.)

Q. Would you say that you have considerable business as an attorney among the Japanese population of the Territory of Hawaii?

A. A fair amount.

Q. Would you say that your business in larger extent is representation of people of Japanese descent in the Territory of Hawaii?

A. That is true.

Q. They naturally gravitate towards a person of their own national descent, I assume?

A. I suppose it is easier to get in contact with their own kind. [101]

Q. And you speak Japanese? A. I do.

Q. And you read Japanese? A. I do.

Q. Were you educated entirely in the United States? A. Entirely.

Q. And where did you receive your education in the Japanese language?

A. Here in the Territory.

Q. Here in the Territory?

A. As well as some correspondence in extension courses from Japan.

Q. And, of course, in the customary use of it in day to day business I assume that you acquired a facility in that fashion, too?

A. Yes, that is quite a bit.

Q. Now, you say that Yotaro Fujino left the Territory of Hawaii in 1935?

A. Thirty-five, yes.

Q. And at that time you prepared a power of attorney for him to Tsuda and Tsutsumi?

(Testimony of Robert Kiyoichi Murakami.)

A. Yes, my recollection is one—the one that is Yootaro Fujino, Y-o-o-t-a-r-o, doing business as Oahu Junk Company, to Tsutsumi and Tsuda, that one was prepared by me. As a matter of fact, I think I was a notary at the time and I took the [102] notary.

The Court: That would be Exhibit “A?”

Mr. Jansen: Yes, Exhibit “A.”

Q. (By Mr. Jansen): Exhibit “A” is the one that was prepared by you and in your office, and you took the acknowledgment, did you?

A. Yes, this is the one.

Q. Now, Exhibit “B” is another power executed by Yotaro but there the name is spelled Y-o-o-t-a-r-o, with two o’s in the first part of the name?

A. That’s right.

Q. Have you examined these powers of attorney before coming here to court?

A. Not particularly. I mean—you mean in detail?

Q. Yes.

A. No, I wouldn’t say that I made any particular study of it.

Q. I see.

A. I may have—I know that I checked them up many times in the past, though.

Q. You had occasion to check them in the past?

A. Yes.

Q. When did you first know that there were two powers?

A. Now, that’s hard to answer because—all the time I thought that my power of attorney was the

(Testimony of Robert Kiyochi Murakami.)

only one, for a long [103] time, although he did mention at the time he came to my office that he went to the bank to sign some document. I didn't know it was a power of attorney.

Q. Well, now, both of these powers are dated the same day, are they not? A. That's right.

Q. And they are both acknowledged the same day? A. That's right.

Q. Do you know who Maltbie Holt is?

A. Maltbie Holt used to work for the Bishop National Bank. I don't know whether he was an officer or not, but he was there. He was an official, city and county official, at one time, too.

Q. The powers, except for the spelling of the name, are practically identical, are they not?

A. Well, I suppose it is a general power; in that sense it is identical.

Q. A general power? A. Yes.

Q. But it was soon after, we will say within the space of at least six months, that you learned that there were two powers?

A. No, I wouldn't be able to say that. I don't think that I discovered that the existence of two different powers of attorney soon after. It must have been some time later, [104] quite a bit later that I learned about that. It may have been as late as the time we wanted to get the new power.

Q. Well, now, you said that Yotaro Fujino had illegally entered the Territory?

A. Yes, I made affidavit for him to that effect in my office before he left.

(Testimony of Robert Kiyoichi Murakami.)

Q. You made an affidavit to that effect?

A. I mean, he made a statement setting forth how he came in, and so forth, as I recall; for him, if I am not mistaken, I took the oath.

Q. Do you know how long he had lived in the Territory?

A. My recollection is, from his statement, since about 1906 or 8, somewhere around there.

Q. Since the early part of the twentieth century?

A. The early part, yes.

Q. And had he ever had any difficulty with his entry up to the time that he left for Japan?

A. By that you mean some immigration——

Q. With the immigration officials or anyone else?

A. Not that I know of except that he and I discussed and I informed him of the fact that being, having entered in that fashion, once he left the Territory that he probably would not be able to return here.

Q. Except as a treaty merchant?

A. Yes, except as a treaty merchant. And that was for [105] that purpose it was that we made the affidavit and about his property holdings and what not, so that he could get a proper visa from the American Consul should he want to return to the Territory to look after his business. And he did want to come back for that purpose.

Q. He did want to come back?

A. Just for that purpose.

Q. To attend to his business?

A. Yes.

(Testimony of Robert Kiyoichi Murakami.)

Q. And he did secure an entry permit, a treaty merchant permit?

A. That's right. He got a Japanese passport and was visaed by the American Consul as a treaty merchant and came in.

Q. And treaty merchants—are you familiar at all with the way that is handled?

A. Well, in a general way.

Q. They ordinarily stay on indefinitely under those permits, do they not?

A. Yes, they could stay, I think, so long as they remain indefinitely if they maintain their status.

Q. Maintain their status as a treaty merchant?

A. As a treaty merchant.

Q. So what he did—he was always a national of Japan? A. Yes.

Q. Even though he may have illegally entered the Territory, [106] he was a national of Japan?

A. He was a national of Japan in the sense that is his citizenship that you are referring to, of course.

Q. Yes. So that what he did accomplish in his trip to Japan and the trip back here was to obtain a legal entry into the Territory as a treaty merchant under which he could probably stay here indefinitely?

A. Yes, I would answer that yes, but he wanted to come back and establish that so-called treaty merchant status so that if and when he had to come back for some purpose he could come back. And I

(Testimony of Robert Kiyochi Murakami.)

don't think he had any purpose in coming back right about six months after except to establish that.

Q. And did he establish that?

A. He did establish it. It wasn't his intention to remain long.

Q. And under that status he could have stayed here indefinitely? A. Yes, he could have.

Q. Now, I assume that you and he had discussed the advisability of establishing a legal entry to the United States or the Territory of Hawaii specifically? A. Specifically.

Q. And that was one of the reasons why he did what he did?

A. Well, as a matter of fact, I wasn't so sure myself [107] that he would be able to establish that. I knew that he had the qualifications, outside of the fact that he had come in illegally in the first place, and I thought that might be a black mark. So I told him, I don't think I can tell you for sure that you would be able to get the visa from the American Consul, and once you leave here it may be the last and you may never see the Islands again. But he wanted to go anyway. He was going to leave the business to his boys over here and retire from active participation in the management of the business. So he took that chance.

Q. You mean in 1935? A. Thirty-five.

Q. In 1935 he was talking about leaving the business to his boy?

(Testimony of Robert Kiyochi Murakami.)

A. No, I mean the management to these fellows over here, Mr. Tsuda and Mr. Tsutsumi and with Mr. Yamamoto, the three of them.

Q. Do you know whether Fujino had any other business interests besides the interests here in Honolulu?

A. I only know from newspaper articles and other hearsay, and he never told me very much about his interests in Japan. I—he probably had something.

Q. Well, in 1940 he was about fifty-five years old?

A. I should say around that, fifty-five, fifty-six, somewhere around there. [108]

Q. And in 1905, when he came to the Territory, he was then——

A. A youngster.

Q. What?

A. Very young, I guess.

Q. Quite young?

A. Yes.

Q. And all of his business life and business have been here in the Territory of Hawaii, have they not?

A. As far as I know.

Q. And whatever business he built up, he built up here in the Territory of Hawaii?

A. Originally, I think, he made his money here.

Q. Yes?

A. But as far as what other investments he had down there, I didn't know.

Q. So as far as you know, the major part of his holdings were here in the Territory of Hawaii and had been built up by him since he came to the Territory?

A. That is true.

(Testimony of Robert Kiyoichi Murakami.)

Q. Now, how long had you known Yamamoto?

A. About the same length of time, I guess; that is, since about 1927, '28.

Q. And Yamamoto was also a national of Japan?

A. Yes. [109]

Q. But you say that he was an employee of the Oahu Junk Company, of Yotaro Fujino?

A. Yes, he was.

Q. And that much of the correspondence was between Yotaro Fujino and Yamamoto?

A. Yes, only in this sense, now: As I recall, he had correspondence to him, addressed to him, too, but most of the correspondence came to Oahu Junk Company.

Q. Oh, I see.

A. In then ame of the Oahu Junk Company. But what I meant was that he was the one that took care of that, answering that type of correspondence in Japanese.

Q. Oh, I see. I guess I misunderstood you. The correspondence actually was between Oahu Junk Company here in Hawaii?

A. That's right.

Q. And Yotaro Fujino in Japan?

A. Yes.

Q. And was addressed to the Oahu Junk Company?

A. Most of them.

Q. And delivered to the Oahu Junk Company? But Yamamoto was the correspondent; he knew Japanese better than Tsutsumi and Tsuda and therefore he answered the letters and probably read them, too, is that right?

A. That's right.

(Testimony of Robert Kiyoichi Murakami.)

Q. Now, where did you see any of this correspondence, [110] in your office?

A. Some correspondence come from Japan, and they'll bring the thing along with them.

Q. Did they bring it to your office?

A. To my office some time.

Q. From the Junk Company offices?

A. That's right.

Q. And did they keep their correspondence in the Junk Company offices?

A. As far as I know.

Q. As far as you know, all of the correspondence between Oahu Junk Company and Yotaro Fujino was kept at the Oahu Junk Company offices?

A. Yes.

Q. Now, have you, since this case began, asked them to search out and produce the correspondence between Yotaro Fujino and Oahu Jung Company?

A. Yes.

Q. And have they produced any correspondence?

A. One or two, a few of them relating to the subject matter.

Q. The other day you showed me two sets of letters, one letter, single letter, and the other one a combination of three letters. Are those the only ones that they were able to produce? [111]

A. I think I showed all of them to you at that time, if I am not mistaken. Of course, those were not produced just before you came; those were in a long time. The Alien Property Custodian's Office had access to that, too, all this time.

(Testimony of Robert Kiyoichi Murakami.)

Q. Well, who has had, who has kept those letters?

A. I think as far as I know, Kaname brought them in.

Q. Kaname brought them in the other day?

A. Yes. Maybe one or two of them we had in Mr. Beebe's office now.

Q. Is that all the correspondence that there is, as far as you know, relating to any of the transactions that you have testified about?

A. As far as I know, yes.

Q. You asked them to produce all the correspondence?

A. I told them to go through the files, whatever they have, telegrams or letters or what notes.

Q. And do you recall seeing any other correspondence than that that was produced by Kaname?

A. A lot of times when they come in and bring the letters, of course they don't always bring the letters, they come in and consult me with the subject matter without bringing the letters, but other times they bring the letters. I know these are not the only ones. I have seen others, too.

Q. Have you asked them to produce the others?

A. I asked them to check everything what they had. [112]

Q. And these two that you showed me the other day are all that have been produced?

A. That's right, two or three, I guess maybe one is a postscript.

(Testimony of Robert Kiyoichi Murakami.)

Q. One group together?

A. Two groups together.

Q. Two separate groups of letters? One is a single letter and the other is three letters? And that's all that you have produced as far as you know?

A. That's right.

Q. Let me see again. Do you have any independent recollection of any other correspondence regarding these transactions that you have testified about than those letters that were produced and shown to me the other day?

A. I don't have any independent recollection of any particular letter.

Q. Do you have any recollection that there were other letters?

A. There were other letters.

Q. Where they are now, of course you don't know?

A. I don't know. I have been only informed. I don't know myself.

Q. Were you in Japan in 1940 on a vacation trip?

A. Yes.

Q. Had you planned to see Yotaro Fujino before you left for Japan? [113]

A. Yes.

Q. Had you discussed with his attorneys-in-fact here your forthcoming trip before you left?

A. Yes.

Q. Talked about the various problems of the business?

A. Yes, but more particularly with Mr. Yamamoto. I did talk with the attorneys-in-fact, too, but the main portion of the talk I think was with Mr. Yamamoto.

(Testimony of Robert Kiyoichi Murakami.)

Q. That's the man who is dead?

A. That's right. That's the man who is the advisor, who was the advisor.

Q. You mean he occupied some other position than that as correspondent?

A. Yes, in the sense that he is the one that was consulted on all important matters, matters of policy, etc., and who was Mr. Fujino's number one advisor, I would say.

Q. When did he die?

A. As I said, he died while he was away on company business down in Manila or Hongkong, or while on ship in 1941.

Q. After the incorporation and after these transfers?

A. Oh, yes; oh, yes.

Q. Well, now, where was it that you saw Yotaro Fujino in Japan?

A. At his own home and also while vacationing together.

Q. And at his own home where? [114]

A. Tokyo.

Q. Did you also see his wife?

A. Yes.

Q. And did you also see Kaname?

A. Yes.

Q. And these talks that you had with Yotaro Fujino in Japan, who was present besides you and Yotaro?

A. Two of us.

Q. Just the two of you?

A. Just two of us. Of course, his wife may have come, and you know, in and out, and maybe Kaname's cousin may have come in and out but didn't—

Q. (Interposing): Who is Kaname's cousin?

A. Tatao.

(Testimony of Robert Kiyoichi Murakami.)

Q. Is he the one that wrote some of these letters that you showed me the other day?

A. That's right.

Q. But actually conversations, as I understood, were between you and Fujino, Yotaro Fujino, alone?

A. That is true.

Q. And whatever you talked about you talked between you two?

A. Yes.

Q. So one might have been in the room or in and out but they didn't take part in the conversations? [115]

A. That is correct.

Q. And Kaname at no time took part in the conversations?

A. No.

Q. Now, did you advise Yotaro at that time of your experience in transferring property from nationals of Japan to citizens of the United States and the advisability for that?

A. Well, I told him about transferring property from father to son.

Q. I mean with relation to the ownership of property in nationals of Japan to transfer the title to United States citizens, that is, American-born or citizens in some other form?

A. No, not in that sense. If you mean just to make a transfer on the face of it. I didn't advise him anything of that kind.

The Court: You did not?

The Witness: I did not. I did not advise him to just make a transfer of title merely for the sake of transferring only the legal title, if that is what you mean.

(Testimony of Robert Kiyoichi Murakami.)

Q. Well, you had had some experience in the transfer of property from—real or personal—from nationals of Japan to citizens of the United States for the purpose of merely transferring the title, had you not?

A. I wouldn't say that. For instance, the old man comes in and he wanted to give his home to his kid. I don't know whether you'd call that just merely for the purpose of transferring title. They'd come and ask me to make the transfer [116] to the young fellow. I'd take it for granted that he is giving it to the child and that child can do what he wants with it.

Q. You merely took that for granted?

A. Yes.

Q. You never inquired with regard to any consideration that might pass between the parties?

A. Well, I took it that when he said he was going to give it to him that it is a pure and simple gift and advise him if it is a gift, and if it is a sufficient amount asked him how much the value of the property is, and that it would be necessary to file a gift tax return, and those things were always discussed, you know.

Q. Now, you had some experience, for example, with the transfer of sampans? A. Yes.

Q. After the Customs Department started making trouble for Japanes nationals who were owners of sampans, had you not?

(Testimony of Robert Kiyoichi Murakami.)

A. I wouldn't say before or after. I know that transfers were made before, too, and I am not sure about after, after the Customs began investigating somewhere in 1940 or '41.

Q. That was in 1939, was it not?

A. Thirty-nine was it?

Q. And many of those transfers were mere transfers of title without consideration, were they not?

A. Well, I wouldn't say many of them. We had only a few, I think.

Q. Some of them were? [117]

A. Some of them pure and simple gifts.

Q. You consider them as pure and simple gifts?

A. Pure and simple gifts they were, some of them.

Q. And when you talked with Yotaro Fujino, did you discuss with him the international situation?

A. That also came up.

Q. And you recognized at the time in 1940 that there was strained relationship between the United States and Japan?

A. There was such talk, although Mr. Fujino didn't think there was——

Q. There was a lot of talk about it at that time, wasn't there? A. Considerable talk.

Q. That was also discussed between you and Yotaro Fujino at the time in 1940?

A. Yes, that came into the subject matter, that is what we discussed.

(Testimony of Robert Kiyoichi Murakami.)

Q. That was a part of the picture? With regard to the corporation, Yotaro Fujino, I think you testified, told you that he wanted to put the sum of the stock in the name of his children but wanted to control it in some fashion, and these notes that were later given was the advice that was used to carry on that intention, is that my understanding?

A. When he asked me how he might have some measure of control for the time being over stock that he gave or wanted [118] to his children, I said, of course, once you give it the kids if they wanted to sell it and they do it, that is your hard luck and nobody can do anything about it. Well, he asked me, well, how can I just to see, for instance my kid Kaname is going to behave and if he is all right or not. Well, I said, if you want to you can take it back as a pledge. You can sell it to him, take the note back and pledge, get a pledge of the shares; then he can't just go ahead and sell it out without you knowing anything about it. And if you want to any time you can later on cancel the note and let go completely of you can, if you want to, give him five thousand dollars this year and the next five thousand dollars and take advantage of the so-called exemption under the gift tax. In other words, at that time in Japan he hadn't said exactly what he was going to do. He wanted to know everything.

Q. He wanted to know for sure that if he did transfer this stock to Kaname and the children

(Testimony of Robert Kiyoichi Murakami.)

that he would have some control over it so that if Kaname didn't behave himself, as you said, he would have that measure of control?

A. He asked me, if he wanted that how I might devise the means. And I said, well, you might do this. Or, I said, you can give him just a little bit to start with and see how he behaves and then give some more. There are a lot of ways but that is one of the ways.

Q. And subsequently, when the corporation was formed, [119] two hundred shares of stock were issued to Kaname and he gave in exchange a note for twenty thousand dollars?

A. That's right.

Q. And as a pledge he secured the shares of stock on that note? A. That's right.

Q. And the sisters each received one hundred seventeen shares and they gave back a note for eleven thousand six hundred dollars?

A. Eleven thousand six hundred or seven hundred, I don't know.

Q. They had a qualifying share?

A. I think you are right.

Q. Eleven thousand six hundred. And in the same fashion pledged the stock to secure the payment of the note, is that right?

A. Yes. I'm not sure about it, one hundred seventeen or one hundred sixteen, but anyway the shares went back as a pledge for that.

(Testimony of Robert Kiyochi Murakami.)

Q. And that was to carry out this original plan that Yotaro and you had discussed in Tokyo or when you were in Japan?

A. That's right. But I would like to tell you right there that it wasn't definitely decided that is what he was going to do.

Q. You mean when you were in Japan it wasn't definitely decided that that is what you were going to do but when the plan was carried out that plan that you had discussed was carried in effect? [120]

A. That's right.

Q. Now, the land, was carried on the books of Yotaro Fujino as an individual trader as an asset of his business?

A. No, on that point I am not positive.

Q. But in any event most of the land involved in **this transfer to Kaname**, with some exception, was land on which the business of Yotaro Fujino is located?

A. That's right.

Mr. Jansen (to Mr. Beebe): Have you got a map of that? I have it if I can find it.

The Court: Would you like a recess?

Mr. Jansen: Yes, your Honor.

(A short recess was taken at 11:15 a.m.)

After Recess

The Court: You may proceed.

Mr. Jansen: I think we might as well, if it please the Court, clear up the location of the property at this time. I think it might make it easier as we go along.

(Testimony of Robert Kiyoichi Murakami.)

The Court: Very well.

Q. (By Mr. Jansen): There are six parcels of property involved, are there not?

A. I believe so.

Mr. Jansen (To the Clerk): Will you mark

The Clerk: As an exhibit?

The Court: If they are going in as an exhibit, he may as well mark them now. [121]

Mr. Beebe: We have no objection to them going in as exhibits.

The Clerk: Defendant's exhibits 1, 2, and 3.

(Three maps, Defendants Exhibits 1, 2 and 3, were received in evidence.)

Mr. Jansen: Now, if it please the Court, I have shown Mr. Beebe these exhibits, Defendant's Exhibits 1, 2 and 3, and they are drawings disclosing the location of the various parcels of land involved in this case. And on each of the parcels they are marked "V.O.", "V.O. 2724," which means Vesting Order 2724. And then Exhibit A, Parcel 1, Exhibit A was attached to the Vesting Order and described the property. There are parcels 1, 2, 3, 4, 5 and 6 consecutively. And on the original exhibits those identifications are marked in red ink. I will offer these in evidence.

The Court: They are already in.

Q. (By Mr. Jansen): Now, Mr. Murakami, will you lay these exhibits here next to you. Exhibit 1, which is this (showing a map), includes four of the parcels of property involved, parcels 1, 2, 3 and 4. And Exhibit 1 shows on the top side of the Ex-

(Testimony of Robert Kiyochi Murakami.)

hibit King Street running in front of parcel 1. Now, on parcel 1, is that where the office of Oahu Junk Company is located? A. That's correct.

Q. And behind Parcel 1, you have two other parcels, 2 and 3, and are some of the facilities of Oahu Junk Company [122] located on those parcels? A. That's correct.

Q. Now, behind parcels 2 and 3 is a parcel of land which is shown as owned by the Bishop Estate. That parcel of land, in fact, is rented by the Oahu Junk Company and used by them, is it not?

A. That is my understanding, that's correct.

Q. And so their facilities are on that parcel also. And then their facilities—behind the Bishop Estate property is parcel 4?

A. That's correct.

Q. And facilities of the Oahu Junk Company are also on there?

A. That's right, I think that is correct.

Q. And behind parcel 4 is the right of way of the Oahu Railroad, and across the right of way is parcel number 5? A. Yes.

Q. Now, are some of the facilities of the Oahu Junk Company also on this parcel?

A. As I understand it, there may have been some, and some other matter there, but that piece is now rented out and being used by Igarashi, a contractor by the name of Igarashi.

Q. And who is he? A. He is a citizen.

Q. No. I mean, what does he do?

A. Contractor, contracting business. [123]

(Testimony of Robert Kiyoichi Murakami.)

Q. But the parcel——

A. I think he has repair for heavy equipment, some such business also.

Q. ——the parcels of land, 1, 2 and 3, the parcel that is rented from the Bishop Estate, 4 and 5, are reasonably contiguous to each other, are they not?

A. They are.

Q. And then parcel 6 is an isolated parcel over on what road is it? A. Waiakamilo road.

Q. Would you say about a block away from the others? A. Yes, I guess.

Q. And a much smaller parcel?

A. A smaller piece.

The Court: What is parcel 6, a home site?

The Witness: It is not—yes.

Q. It is unimproved?

A. Yes, unimproved. I think it is one of those that is not used in connection with the business. As to these matters, I think the attorneys-in-fact know better than I do.

Q. Now. parcels 1, 2 and 3 and the Bishop Estate parcel, and parcel 4, were used by the Oahu Junk Company when they were in the individual ownership of Yotaro Fujino?

A. That is true.

Q. At the time of the transfer the facilities of the [124] Oahu Junk Company were on these five pieces of property, the five including the Bishop Estate parcel?

A. Yes, I think that is true.

(Testimony of Robert Kiyoichi Murakami.)

Q. But the real estate was not included in the transfer from Yotaro Fujino to the Oahu Junk Company? A. Was not included.

Q. Is that right? A. Yes.

Q. And the Oahu Junk Company in consideration of the transfer of the personal property, the business of Yotaro Fujino, the good will and all that goes with it, assumed all of Yotaro Fujino's obligations in the business?

A. Except certain small items of obligation maybe. I'm not sure that it is absolutely all now. It is in there.

Q. Do you have the copy of the bill of sale between Yotaro Fujino and the Oahu Junk Company?

A. I should have one. The original should be with the Oahu Junk Company.

Q. I think we should have that.

A. I think you have one, too. It was furnished to your office.

Q. Well, I will show you this and ask you if you recognize this as being a true copy of the bill of sale from Yotaro Fujino, as an individual, to the Oahu Junk Company? (Showing a document to the witness) [125]

A. Yes, I believe this is the true copy. It looks—I don't know whether it's a duplicate of the original but it appears to be the correct copy.

Mr. Jansen: Well, I'll have no objection to verifying it.

(Testimony of Robert Kiyochi Murakami.)

Mr. Beebe: Well, subject to checking and verifying, it may go in.

The Court: Very well. Government's Exhibit—

The Clerk: No. 4.

(Defendant's Exhibit No. 4 was received in evidence.)

[Defendant's Exhibit No. 4 set out on pages 449 to 454.]

Q. (By Mr. Jansen): And the bill of sale,—we'll call it that—the agreement is executed by Yotaro Fujino through his attorney-in-fact and by the Oahu Junk Company by its vice-president and treasurer? I mean both parties were parties to the agreement.

A. That is true.

Q. And under the provisions of this agreement the Oahu Junk Company assumed all of the obligations of Yotaro Fujino doing business as Oahu Junk and Oahu Hardware, is that right?

A. That is true.

Q. And those obligations I think you have already testified were for the most part obligations to the Bishop Bank in the sum of \$20,000?

A. That was the biggest item.

Q. Yes.

A. But there were others, too. [126]

Q. I think you will find attached here—

A. Yes, \$20,000 to the Bishop Bank was the biggest item, outside of the accounts payable and other temporary deposit accounts, etc.

(Testimony of Robert Kiyoichi Murakami.)

Q. And of the \$20,000, \$1,500 was the secured obligation, secured on the real estate, secured by the real estate?

A. Secured by real estate. I'm not sure which, but one or two of the parcels.

Q. Not all of the parcels?

A. Not all. One or two.

Q. And the rest of the obligations to the Bishop Bank, in the sum of \$20,000, were unsecured?

A. Unsecured.

The Court: Wait a minute. This mortgage for \$20,000 to the bank,—it was after the transfer—

The Witness: It was unsecured except as to one thousand five hundred dollars.

The Court: —it was thereafter that the mortgage to the bank was executed?

The Witness: That is true, thereafter.

The Court: All right.

Q. (By Mr. Jansen): It was after the transfer of the personal property, the good will, the business of the Oahu Junk Company and the Oahu Lumber and Hardware Company to the Corporation that the mortgage [127] to the bank was executed?

A. Yes. It was actually, the actual execution was after, although it was intended as almost a simultaneous transaction, but as I explained in the direct examination we had to go and get the new power of attorney, etc., and so it was delayed. But the understanding with the bank was that we were going to secure that mortgage on Yotaro Fujino's real property.

(Testimony of Robert Kiyoichi Murakami.)

Q. Well, then, if I understand you correctly, at the time the corporation was organized it was contemplated that the real estate would not be transferred to the corporation?

A. That is correct.

Q. That the business, outside of the real estate, would be transferred to the corporation?

A. That is true.

Q. The corporation would assume all of Yotaro Fujino's obligations?

A. Yes.

Q. That is correct?

A. Correct.

Q. But notwithstanding that, Yotaro Fujino would give a mortgage on his real estate for \$15,000 to the Bishop Bank?

A. That is true except that I think the \$15,000 was later written down as \$15,000. At the time we thought it was going to be for the whole \$20,000. That is, it was our understanding.

Q. So far as you understood it, at the time of the [128] incorporation it would have been for the full amount of the indebtedness of Oahu Junk.

A. To the bank.

Q. To the bank?

A. That's right.

Q. That Yotaro Fujino would execute a mortgage on his own personally-held real estate to cover the debt of the Junk Company, the corporation, to the bank?

A. Yes. The debt of the corporation was assumed—the original of Yotaro Fujino's personal debt——

(Testimony of Robert Kiyoichi Murakami.)

Q. (Interposing): Yes, but in exchange for the property of the business the corporation assumed all of his personal debts?

A. That is true.

Q. And notwithstanding their agreement to assume the debt, Yotaro was to execute this mortgage to the bank at first thought to be for the full amount of the debt? A. Yes.

Q. A mortgage on his own personally-held real estate? A. That is true.

Q. Real estate that was excepted from the deal between the corporation and Yotaro?

A. That is true.

Q. And the fifteen thousand dollar mortgage that was later executed by the attorneys-in-fact for Yotaro Fujino in [129] March, 1941, was to carry out that originally-understood transaction?

A. That is true.

Q. And the stock of the corporation that was issued contemporaneously with this transaction we have been discussing was issued, 200 shares to Kaname Fujino? A. That's right.

Q. One hundred seventeen shares to his sister?

A. That's right.

Q. One hundred seventeen shares to his other sister? A. That's right.

Q. And how many shares to Yotaro?

A. I believe it was 240.

Q. And 117 shares to Chiyono Fujino?

A. That's correct.

(Testimony of Robert Kiyoichi Murakami.)

Q. Chiyono Fujino, Yotaro's wife?

A. That's right.

Q. So after the stock of the corporation was issued there would be 800 shares outstanding?

A. Yes, 800 shares.

Q. Three of them held by Yamamoto, one each, Yamamoto, Tsuda and Tsutsumi?

A. Correct.

Q. Qualifying shares? A. Correct.

Q. That's right? Two hundred forty shares by Yotaro? [130]

A. That's right.

Q. And 117 shares by Chiyono?

A. That's right.

Q. And Yotaro and Chiyono were both nationals of Japan? A. Yes.

Q. Their interest, then, at the time that their stock was issued represented a minority interest in the corporation? A. Let me see.

Q. Two hundred forty and one hundred seventeen is three hundred fifty-seven.

A. Minority interest.

Q. Because Kaname's and his sisters' shares would be four hundred and thirty-four, wouldn't it? Is that right? A. Correct.

Q. And two shares held by Tsuda and Tsutsumi, who were also both citizens of the United States, would even up that a little bit, and it would be four hundred thirty-six shares held by citizens of the United States? A. That's right.

(Testimony of Robert Kiyoichi Murakami.)

Q. So the majority holding in the corporation at the time the stock was issued—and that has never been changed since, has it? I mean in proportions.

A. Wait a minute. I don't know, because there was some stock dividends.

Q. Ten thousand dollars. But the dividend upon the [131] amount of stock held by each stockholder—they received a proportionate amount. The over-all proportions remained the same.

The Court: I'm not clear in my mind about this stock. Originally the corporation was a corporation organized on a thousand dollar capitalization?

Mr. Jansen: That's right.

The Court: And who were then the stockholders?

Mr. Jansen: The incorporators.

The Witness: Yamamoto had one share, Tsuda had one share. Tsutsumi had one share.

Mr. Jansen: The two sisters.

The Witness: The girls. Katsue had one share, one or two, I'm not sure, maybe two, two a piece maybe, two a piece for the two girls. And Yotaro had one share.

Mr. Jansen: One share?

The Witness: One or two shares.

The Court: Well, I don't know if it is going to be important:

The Witness: All told there were ten shares.

The Court: Ten in all?

The Witness: Ten in all, a hundred dollars par, a thousand dollars.

(Testimony of Robert Kiyoichi Murakami.)

Q. Well, the 10 shares were held, two by Yotaro and one by Chiyono? [132]

A. One by Chiyono.

Q. Well, look at the minutes and get it right there.

A. That's right, two shares by Yotaro Fujino and one share by Chiyono Fujino.

The Court: That's the mother?

The Witness: Mother. Two by Katsue Fujieki, the elder daughter, two by Shizue Maneki, the younger daughter; one by Tokuichi Tsuda, one by Yasuo Tsutsumi, one by S. Yamamoto.

Q. Those are the original ten shares under the original one thousand dollar incorporation?

A. That's right.

The Court: Then the next increase of capitalization of the 790 shares—240 were held by Yotaro?

The Witness: No, I say 238 was Yotaro.

The Court: One hundred seventeen by the boy, one hundred seventeen by each girl.

Mr. Jansen: No, two hundred by the boy.

The Court: Two hundred? One hundred seventeen by each of the girls, and the mother.

The Witness: One hundred seventeen by each of the girls, and according to this (referring to a book), one hundred eighteen to the mother.

The Court: One hundred eighteen to the mother. All right. I think that adds up right now.

(Testimony of Robert Kiyochi Murakami.)

Q. Then when the stock, when the 790 shares were issued, there were actually outstanding 800 shares because you had the [133] original ten shares? A. That's correct.

Q. And then when the stock dividend was later declared, so that you had outstanding 800 shares, the dividend was received by each of the stockholders in proportion to his holdings?

A. That's correct.

Q. So the proportion remained the same?

A. That's right.

Q. Did not the two powers of attorney that Yotaro Fujino had previously executed give the attorneys-in-fact power to mortgage property with the Bishop Bank? A. I think they did.

Q. But you considered it was advisable to have a new power of attorney?

A. Well, that was the situation. As I said, one of the pieces that—the last piece, parcel number 6—was the one which was Land Court title, in which his name was registered as Y-o-o-t-a-r-o Fujino, and I don't know whether there was another one with that title but particularly the one with the Land Court having been in one name and the difficulty with the Land Court, Assistant Registrar of the Land Court's Office as to the power of attorney—there had been two powers of attorney outstanding and no identification of the two referring to the same man, etc., and it was the combined opinion of the bank and myself, as I re-

(Testimony of Robert Kiyoichi Murakami.)

call, that we thought it was the best to get a new one, mentioning the fact that Yotaro is also known as [134] Y-o-o-t-a-r-o, also with the provision as to where their residence and post office address was, so that we could make a mortgage covering not only one type of property but the other type of property and pass it through the record office.

Q. And it was for the purpose of executing this mortgage and carrying out the general plan that you obtained this last power of attorney from Yotaro Fujino?

A. That is true, to execute the entire plan of transfer of mortgage and everything.

Q. Now, at the time the stock was issued to Kaname and his two sisters contemporaneously with the issuance of the stock, the notes were obtained back from Kaname and his two sisters?

A. Well, from the two sisters, yes, individually they signed.

Q. They individually signed?

A. Then another problem came up. Kaname was not here, and except for an understanding that these two gentlemen, Tsuda and Tsutsumi, would act for him as attorney-in-fact, we didn't have the power of attorney back from Kaname yet. But nevertheless we made them sign it and the power of attorney did come back within a short time.

Q. You had a power of attorney on the way from Kaname to Tsutsumi and Tsuda?

A. That's right.

(Testimony of Robert Kiyochi Murakami.)

Q. And they executed the note for Kaname?

A. That's correct. [135]

Q. His note was for twenty thousand and the girls' notes were for each eleven thousand six hundred? There might be a difference of a hundred?

A. I don't know, eleven thousand some odd hundred dollars.

Q. And those notes were to cover the purchase price of this stock and pledge—the stock was pledged as security for the notes?

A. That is correct.

Q. And that was recited in the minutes of the corporation and all that? A. That is true.

Q. Well, now, when this deed was executed, signed by the attorneys-in-fact to Kaname——

The Court: Exhibit "H".

Q. ——Exhibit "H", yes, Kaname wasn't actually in this country, was he?

A. He was physically in Japan yet.

Q. Physically in Japan? When was this deed, Exhibit "H", delivered to Kaname?

A. Now, the only thing I can say, the only way I can answer that, is by hearsay, but it was executed in our office; and my personal, best recollection, is that Mr. Tsuda was the one that took it down to the bank.

Q. Took it where?

A. Down to the Bishop Bank.

Q. Well, was this deed ever in fact delivered to Kaname [136] Fujino? A. Yes.

(Testimony of Robert Kiyoichi Murakami.)

Q. When?

A. As I say, I can't be talking from my personal knowledge now because I don't know. I didn't witness that actually. But from refreshing our memory, and so forth, the deed was taken by Mr. Tsuda to the bank with instructions to go—I told him, go ahead and pick up the transfer certificate of title, the Land Court certificate of title, there and then take it up to record it; because it involved one Land Court title and the mortgage covered that particular piece, too, and the Bishop Bank had that transfer certificate of title.

Q. But Kaname himself was never actually here to receive delivery of this deed, was he?

A. No. He came back and took delivery and took it down to the record office.

Q. Who took it down to the record office?

A. The best I can figure it out is that he took it down himself.

Q. You mean after he came back to this country?

A. Yes, yes.

Q. Well, how about the attorneys-in-fact for Kaname? Couldn't they accept delivery of the deed?

A. Well, they had it, you know.

Q. They had it?

A. Mr. Tsuda had it immediately after it was executed. [137] And as I say, my recollection is that I told him to take it down to the bank and borrow that transfer certificate of title and record it.

(Testimony of Robert Kiyochi Murakami.)

Q. Your recollection is that you told him to do that?
A. Yes.

Q. And that was in March, 1941?

A. Yes, in March, 1941, yes.

Q. At that time Tsuda and Tsutsumi were attorneys-in-fact for Kaname?

A. That's right.

Q. And it was your instructions to them to take the deed, get the certificate of title and file the deed. But in fact they didn't do that, did they?

A. The fact is that they did not actually carry out all that, as I later learned.

Q. The deed was not actually filed of record until May, 1941?

A. That is correct. The record shows that, too.

Q. And you know of no reason why they delayed the filing of the deed, of your own knowledge?

A. Not of my own knowledge. That's why I'm telling you that I don't know.

Q. Was the power of attorney from Kaname to Tsuda and Tsutsumi in their hands at the time that deed was executed in March, 1941?

A. You are referring to Kaname's power of attorney? [138]

Q. Kaname's. A. That's right.

Q. Did they have that power of attorney then?

A. They had that power of attorney.

Q. You are sure of that?

A. I am sure of that. I don't know whether they had it physically there at the time.

(Testimony of Robert Kiyoichi Murakami.)

Q. No, I mean they had received it from Kaname in Japan.

A. Yes. And, as a matter of fact, it had been recorded there prior to that.

The Court: It is now 12 o'clock, gentlemen. I am a little confused on what our schedule was. My thought is that we are going on this afternoon. Would it be advantageous to adjourn now and resume shortly after one?

Mr. Jansen: One-thirty. Or would you rather start a little earlier?

The Court: Whatever you want to do.

Mr. Beebe: I'd rather start at one-thirty. I noticed you Honor's face fall a little bit. I thought maybe I misread it.

The Court: No, one-thirty is all right. I am trying to use all the time we can.

(The Court recessed at 12 o'clock, noon.)

Afternoon Session

The Court: The same witness is on the stand and is still under oath. You may proceed.

ROBERT KIYOICHI MURAKAMI

a witness in behalf of the plaintiff, having previously been sworn, resumed and testified further as follows:

Mr. Jansen: I have no further cross-examination.

Redirect Examination

By Mr. Beebe:

Q. Mr. Murakami, you stated in your cross-examination that Kaname was not here at the time

(Testimony of Robert Kiyoichi Murakami.)
that that was executed. Do you know when Kaname returned to the Territory of Hawaii?

A. Shortly thereafter, I think the first part of May of the same year.

Q. The first part of May of the same year? By that you mean the year 1941? A. Yes.

Q. Now, at the time of transfer of the property to Kaname, do you know whether or not he made a gift for tax returns?

A. That was thereafter.

Q. That is after his return to the Territory?

A. Yes.

The Court: Excuse me. You are asking who made a gift tax return?

Mr. Beebe: Kaname.

The Court: That is the Plaintiff? [140]

Mr. Beebe: Yes, Kaname Fujino. May the record show that when I referred to Kaname, I was referring to Kaname Fujino?

The Court: Yes, I understood, but I thought whom you meant should make the gift tax return. So the question is, did he to your knowledge make a gift tax return subsequent to his return in May, 1941?

The Witness: Yes.

The Court: He did?

The Witness: He did.

Q. (By Mr. Beebe): Do you know whether that gift tax return was made by Kaname or Yotaro through his attorneys-in-fact?

(Testimony of Robert Kiyochi Murakami.)

A. As far as I know, by both, that is, donor and donee.

Q. Directing your attention to a green document, which is stamped "Client's Copy" and has in its heading "Gift Tax Return; Calendar Year 1941; Donor, Yotaro Fujino; Address, 1217 North King Street; Citizenship, National of Japan; Residence, Tokyo, Japan," and to a check attached thereto dated March 16, 1942, drawn on the Bishop National Bank of Hawaii at Honolulu, and payable to the order of Collector of Internal Revenue, being for the amount of \$779.63, having stamped "Yotaro Fujino by Tsuda and Tsutsumi,"—I can't figure the initials—I will ask you if you ever saw that document, the original of that document and the check? (Handing a document to the witness.)

A. The original of this document, entitled "Gift Tax Return," I saw. I believe I checked it. It wasn't prepared by myself but by the accountant, C.P.A.'s. As far as the check, [141] I have seen this before but I don't know whether or not I saw it at that time. I don't recall.

Q. I'll wait, then,—

A. Maybe I saw it, as a matter of fact.

Q. —I'll take care of that later. Now, after the transfer of the property, as indicated by—Exhibit "H," is it?—the deed—

The Court: Yes, "H."

Q. —do you know whether or not, or do you know of your own knowledge whether or not any

(Testimony of Robert Kiyoichi Murakami.)

rental was paid by the corporation to Kaname, of your own knowledge?

A. I wouldn't say of my own knowledge.

Q. I see. All right. Going back to Seichi or Seitaro Yamamoto, did he have an office or rather a desk in the Oahu Junk Company premises?

A. I'm not sure whether or not he had a separate desk now. He was there all the time.

The Court: Who was this, again?

The Witness: Seitaro Yamamoto.

The Court: Oh.

The Witness: The other gentleman.

The Court: But you are not sure whether he had a desk?

The Witness: I'm not sure whether or not he had a separate desk by himself or whether any particular desk was assigned to him. [142]

The Court: And this would be true both before and after the corporation was formed?

The Witness: That is true because most of the time he came down in the office, to my office.

Q. (By Mr. Beebe): Now, after the corporation was formed, so far as you observed was there any difference in the position of Yamamoto as far as Oahu Junk Company was concerned?

A. Well, he became one of the directors. Prior to that, of course, he was a personal advisor to Mr. Fujino and also the advisor to the two attorneys-in-fact who were respectively manager and assistant manager of the enterprise.

Mr. Beebe: I think that is all, Mr. Murakami.

(Testimony of Robert Kiyoichi Murakami.)

The Court: Recross?

Mr. Jansen: No further questions.

The Court: You are excused.

(Witness excused.)

Mr. Beebe: At this time, if your Honor please, I'd like to introduce in evidence power of attorney from Kaname Fujino, Honolulu, City and County of Honolulu, Territory of Hawaii, followed in brackets by "Temporarily Residing in Tokyo, Japan," wherein he constitutes Tokuichi Tsuda and Yasuo Tsutsumi, of Honolulu, as his attorneys-in-fact; the document being signed the 12th day of December, 1940, by Kaname Fujino, and the acknowledgement having been taken before David Thomasson, Vice Consul [143] of the United States, on the 12th of December, 1940; the document having been recorded on the 3rd day of March, 1941, in the Bureau of Conveyances in Liber 16330, on pages 53-5.

Mr. Jansen: No objection.

The Court: Very well. It may be received as Exhibit "I." Is that right?

The Clerk: "I" would be the next one.

(Plaintiff's Exhibit "I" was received in evidence.)

[Plaintiff's Exhibit "I" set out on pages 509 to 512.]

The Court: You may call your next witness.

Mr. Beebe: I will call Kaname Fujino.

KANAME FUJINO,

a witness in his own behalf, being duly sworn, testified as follows:

The Court: You are the Plaintiff in this action?

The Witness: Yes.

The Court: Your age?

The Witness: Twenty-seven.

The Court: Residence?

The Witness: Honolulu.

The Court: Occupation?

The Witness: Executive.

The Court: What?

The Witness: Oahu Junk Company.

The Court: And your citizenship?

The Witness: U.S.A. [144]

The Court: Exclusively?

The Witness: Yes.

The Court: You may take the witness.

Direct Examination

By Mr. Beebe:

Q. When were you born, Kaname?

A. February 23, 1919.

Q. And where were you born?

A. Honolulu, T. H.

Q. Can you tell us where in Honolulu you were born?

A. Niepers Lane, N-i-e-p-e-r-s.

Q. Directing your attention to Government's Exhibit No. 1, which is a map of various properties, I notice on the map a lane, Niepers Lane, opening into King Street alongside of parcel 1 as

(Testimony of Kaname Fujino.)

shown on Exhibit 1. Is that the lane upon which you were born? (Showing a map to the witness.)

A. Yes.

Q. On which piece of property was it that you were born, if you can show it?

A. This is King Street (indicating). I was born right here opposite Oahu Junk, right next to Oahu Junk (indicating).

Q. You were born next to Oahu Junk?

A. Opposite the tested property.

Q. It has a designation in the lefthand corner, 22? A. Yes. [145]

Q. Parcel 1 being designated on Exhibit 1 as 23? A. Twenty-two.

Q. No, but parcel 1 on this map, Exhibit "A," is 23? A. Yes.

Q. And you were born on the parcel shown in black or blue ink as 22, is that correct?

A. That is correct.

Q. Your father's name was what?

A. Yotaro Fujino.

Q. And your mother's name?

A. Chiyono Fujino.

Q. Have you any brothers or sisters?

A. I have two elder sisters.

Q. Their names are now what?

A. Mrs. Katsue Fujieki and Mrs. Shizue Moneki.

Q. You were the only son, then, in the family?

A. Yes.

(Testimony of Kaname Fujino.)

Q. Have you resided here in the Territory all of your life? A. No.

Q. When was the first time that you left the Territory, Kaname?

A. That was when I was about five years old.

Q. Where did you go? A. To Japan?

Q. With whom? [146]

A. With my mother.

Q. Remaining in Japan for how long a period of time? A. About three or four months.

Q. That was along in 1924 or '25?

A. Yes, about that time.

Q. Now, then, did you remain in Honolulu all the time thereafter? A. No.

Q. When did you next leave the Territory of Hawaii, Kaname? A. August 7, 1934.

Q. And you were at that time about fifteen years of age, were you? A. Yes.

Q. And what schooling had you had here in Honolulu up to August 7, 1934?

A. I finished intermediate school.

Q. By that you mean junior high school or what?

A. Yes, I finished Kalakaua Junior High School.

Q. I see. And what was the occasion of your going to Japan then on August 7, 1934?

A. On just—at my father's say to take a trip there.

Q. Did you go to school while you were in Japan? A. Yes, I did.

(Testimony of Kaname Fujino.)

Q. What school did you attend in Japan? [147]

A. Waseda Business School.

Q. Business school? A. Yes.

Q. Is that a part of Waseda College or entirely distinct and separate? A. Independent.

Q. And where is Waseda Business School?

A. In Tokyo.

Q. How long did you attend Waseda Business School? A. Six years.

Q. Is that the length of any particular course that you took?

A. Yes, it is a six years' course.

Q. Now, what course did you take——

A. Majored in——

Q. ——in Waseda Business School?

A. ——majored in business subjects.

Q. How would you characterize that if you went to a college here?

A. Oh, just like Honolulu Business College. They teach you typing, bookkeeping, accounting, English courses, correspondence in English, business letters.

Q. I see. And did you study both English and Japanese while you were in this school?

A. Yes. [148]

Q. And it was approximately the same as a business college here? A. Yes.

Q. Except that the course took six years, is that right? A. Yes.

(Testimony of Kaname Fujino.)

Q. When did you finish your course in Waseda Business School or College?

A. March, 1941.

Q. Then you attended from approximately—when did you start school?

A. April, 1935.

Q. You were how old when you graduated, or did you graduate? A. Yes.

Q. How old were you when you graduated?

A. Twenty-two years old.

Q. Now, when did you return from Japan to the Territory of Hawaii?

A. I reached here May 4, 1941.

Q. And you left Japan at what time?

A. April 26, 1941.

Q. Do you know whether or not at the time of your birth or soon thereafter whether you were registered at the Japanese Consulate?

A. I wouldn't know.

Q. Well, while you were in Japan did you take any steps toward expatriating yourself? [149]

A. Yes, I did.

Q. What steps did you take and what was the result?

A. We had to go through this Home Ministry and go through all kinds of red tape, and then they notified me that I had expatriated from the Japanese citizenship.

Q. Did you receive any document or paper of any kind showing that you had expatriated?

(Testimony of Kaname Fujino.)

A. Yes, I think I sent it to the place that my parents were born. That's where the family record was registered. I think that's where they sent it. My father sent it for me to let them know that I had been cut off from the Japanese citizenship.

Q. Did you receive anything from the Consulate here in Honolulu indicating that according to their records you were expatriated?

A. Yes, on one occasion I had to get it so I did receive confirmation from the local Japanese Consulate.

(Mr. Beebe shows a document to Mr. Jansen.)

Q. Now, you made your application, as I understood it, while you were in Japan, or took whatever steps were necessary? A. Yes.

Q. While you were in Japan? And that application was made to whom in Japan?

A. I believe to the Home Ministry.

Q. And directing your attention to a paper on stationery, the heading of which is "Imperial Japanese Consulate General, [150] Honolulu, T. H.," on the side is a stamp number 528, December 2, 1941, reading:

"To Whom It May Concern:

"This is to certify that Kaname Fujino, according to the records of this office, was expatriated from the Japanese Nationality on January 19, 1939,

(Testimony of Kaname Fujino.)

by Notification No. 15 of the Ministry of Home Affairs.

“Consul-General of Japan,
“Per K. YUGE, Secretary.”

And having a gold biscuit on it (showing document to witness).

A. Maybe I could read it.

Q. Maybe you can read the imprint on the biscuit.

A. It says, “Imperial Japanese Majesty, Consulate General, Honolulu, T. H.”

Mr. Beebe: I'd like to offer this in evidence, if your Honor please. I have furnished a copy of it to Mr. Jansen.

Mr. Jansen: No objection.

The Court: Very well. It may become the Plaintiff's Exhibit—“J” is it?

The Clerk: Yes.

(Plaintiff's Exhibit “J” was received in evidence.)

[Plaintiff's Exhibit “J” set out on page 513.]

Q. (By Mr. Beebe): Now, at the time you left Japan, which as I recall was on April 26, 1941, what were your intentions? [151]

A. Oh, I wanted to come back to my native land. I wanted to go to an American college and I wanted to make this my home.

Q. Did you so express yourself to your father at the time of your leaving?

A. Yes, he wanted me to go to Waseda Univer-

(Testimony of Kaname Fujino.)

sity but I told him I wanted to come back to Hawaii and go to an American college.

Q. Now, at the time you left, or prior thereto, had your father said anything to you about the real property that he owned here in the Territory of Hawaii or the business that he had conducted here in the Territory of Hawaii?

A. Yes, he said he was——

Mr. Jansen (Interposing): Just a minute. I object to what he said. I think the answer to the question should be. Yes. I object to the witness going further, because if you are going to ask him for the conversation I am going to object to that.

Q. But your answer to the question is that you did have a conversation with your father in which the real property and the personal property was mentioned? A. Yes, casually.

Q. Was there any conversation with him regarding the incorporation of the business and a stock ownership in the business? Now just answer that Yes or No, please. A. Yes. [152]

Q. And approximately when did you have these conversations with your father, if you can tell us; if it is on more than one occasion, say so, giving us approximately the time?

A. I think just before the incorporation in about September, October, of 1940.

Q. Now, you knew Mr. Robert Murakami, do you? A. Yes, I do.

Q. Did you see Mr. Murakami while he was in Japan in the year 1940?

(Testimony of Kaname Fujino.)

A. Yes, I saw him.

Q. Where did you see him?

A. At my father's place.

Q. By that you mean at your home?

A. Yes.

Q. Did your father have a place of business also or just a home?

A. His home was his place of business.

Q. I see. On how many different occasions did you see Mr. Murakami at your home?

A. Well, I can't count how many times I saw him but on several occasions I saw him at our home.

Q. And how long, if you recall, was Mr. Murakami in Japan, if you recall?

A. Well, I saw him maybe about over a month.

Q. Did he live at your home or did he live elsewhere?

A. Yes, for a time I think he stayed, he stayed at my home; as a guest, he came and went.

Q. How long a time, would you say, that he stayed at your home?

A. Maybe a week. Well, it was quite far off.

Q. Now, in December of 1940, in December of 1940, December 12 of 1940, did you execute a power of attorney to Tokuichi Tsuda and Yasuo Tsutsumi?

A. Yes, I did.

Q. That power of attorney was executed on the 12th of December, 1940? A. Yes.

Q. And the signature there, Kaname Fujino, is that your signature (showing a document to the witness)? A. Yes.

(Testimony of Kaname Fujino.)

Q. What was the purpose of your executing that power of attorney, if you know?

A. I believe it was to sign a note to my father.

Q. This is a power of attorney executed by you to Tsutsumi and Tsuda? A. Yes.

Q. To execute a note? What did you say, for your father or by your father?

Mr. Jansen: To my father, he said. [154]

The Court: To.

Mr. Beebe: Oh, I see.

Q. What sort of a transaction was it that was contemplated when you say it was to sign a note to your father?

A. Well, about the time of the incorporation my father said he was giving us some shares, and he said I was still going to school and didn't show my worth yet, so, well, he was making us sign a note and later on he said he will give us, to us—now, I'm now still going to school yet, until a few years.

Q. This note was connected with the incorporation, did you say, and the shares?

A. Beg your pardon?

Q. This note was for what purpose, did you say?

A. What I recall, he just said he was making us sign a note for the shares.

Q. Shares in what?

A. That he was giving us, giving me—

Q. Again I say in what shares, shares in what?

A. In the corporation.

Q. And did you know that your father had incorporated his business into a corporation?

(Testimony of Kaname Fujino.)

A. Yes, he was saying that it has been incorporated.

Q. And that primarily, as I understand that power of attorney that you just mentioned, being Exhibit "I,"——

The Court: That's right.

Q. ——was given for that purpose, as you understood it? [155] A. Yes.

Q. Do you know whether or not such a note was executed by your attorneys-in-fact?

A. Well, I went to the American Consulate, signed it, and I was supposed to send it back to Mr. Tsuda and Tsutsumi.

Q. But my question was, do you know whether or not, as a matter of fact, your attorneys-in-fact, acting under the authority given in Exhibit "I" did execute a note to your father? A. Yes.

Q. Where is that note, if you know?

A. Now?

Q. Yes. A. I have a copy of it.

Q. Where is the original of that note, if you know?

A. Oh, it was in Honolulu at that time.

Mr. Jansen: The Custodian has it in the Custodian's Office.

Mr. Beebe: That's what I was trying to get from him, that the Custodian had the original of that note.

The Witness: Yes.

Q. The note was for how much?

A. Twenty thousand dollars.

(Testimony of Kaname Fujino.)

Q. And subsequent to your coming to the Territory of Hawaii—when did you arrive back here?

The Court: May. [156]

A. May 4, 1941.

Q. May 4, 1941? Were you shown or given a deed covering the property owned by your father?

The Court: “H.”

Mr. Jansen: “H,” isn’t it?

The Court: That’s the deed in question, “H.”

Mr. Jansen: Yes.

Mr. Beebe: The deed being in evidence here as Plaintiff’s Exhibit “H” (showing a document to the witness).

A. Yes, I saw this.

Q. From whom did you receive it?

A. From the Bishop Bank.

Q. Can you tell the Court the circumstances under which you received it from the Bishop Bank?

A. I remember once——

Q. I mean the first time.

A. ——Mr. Tsuda told me to go to the bank to pick it up and have it recorded, so I went to the Bishop Bank and got this, and that’s when.

Q. Now, did you obtain the original of that deed, Exhibit “H,” from the Bank of Bishop?

A. Yes, I got the original and brought it to the Bureau of Conveyances.

Q. Did you get anything else from the bank other than the original of that? [157]

A. This and another one, Land Court Certificate

(Testimony of Kaname Fujino.)

of Title. I brought it down to the Bureau of Conveyances.

Q. Then the original of that document which you are holding your hand, which is Exhibit "H," and the Transfer Certificate of Title, you took and had recorded yourself, is that correct?

A. Yes, yes.

Q. I noticed on the back of Exhibit "H" and on the left hand upper corner the name Kaname Fujino. Do you know in whose handwriting that name is? A. I must have signed it.

Q. Is that your signature? A. Yes.

Q. That is your signature, is it? A. Yes.

The Court: This matter of receiving this document from the bank is not clear to me, whether he means he received it from a bank official or from a safety deposit box in the bank or what.

Q. Will you clear that up?

A. I went to the note department of the bank and took it out and I signed for it and then I brought it there. And I must have—I brought it back to the bank because at that time it was under mortgage.

Q. When you say you brought it back to the bank, what [158] do you mean?

A. I signed it, I took it out, I registered it and I took it back after it was recorded and brought it back to the bank.

Q. Now, you still haven't answered my question. What do you mean by it? You took two things from the bank, the Transfer Certificate of Title—— A. And the deed.

(Testimony of Kaname Fujino.)

Q. —the deed, which is in evidence as Exhibit “H?” A. Yes.

Q. Now, what did you take back to the bank, both, or the Transfer Certificate of Title, or what?

A. Yes, the deed. The old one was under Yotaro Fujino, I think, and came back as Kaname Fujino. I have a copy of this title of certificate. That and this deed I brought it back to the bank and left it there.

Q. Well, now, was that the same day or some days or weeks later? A. Later on.

Q. Now, you mentioned the fact that the property was under mortgage to the bank. By that do you mean a mortgage of fifteen thousand dollars that is referred to in Exhibit “G,” directing your attention to Exhibit “G?”

A. Yes. Well, the details I wouldn’t know because Mr. Tsuda and Tsutsumi did the actual running of the business. I only knew that there was a mortgage. [159]

Q. Did you have occasion to endorse or sign a note at any time in connection with that obligation shown in the exhibit to which I have just called your attention? A. Yes.

Q. Have you that note, Kaname, in your files?

A. No.

(Mr. Beebe shows two small sheets of paper to Mr. Jansen.)

Q. Directing your attention to a canceled note in the amount of fifteen thousand dollars, bearing

(Testimony of Kaname Fujino.)

date March 13, 1941, payable to the Bishop National Bank of Hawaii at Honolulu, signed apparently by Yotaro and Chiyono Fujino, by Tsutsumi and Tsuda as their attorneys-in-fact, the same having on its face notations secured by mortgage dated March 13, 1941, and particularly addressing myself to the signature Kaname R. Fujino shown on the left-hand margin of that note, is that your signature, Kaname? A. Yes.

Q. And when, Kaname, did you sign or endorse this note to which I have just addressed your attention?

A. When I said I went to the bank the first time to take out the deed and Transfer Certificate of Title. At that time they made me endorse this.

Q. At the time of that endorsement, do you know whether or not any funds had been turned over to Oahu Junk Company?

A. I don't know. [160]

Mr. Beebe: The reason I ask that question, I note on the back here the first endorsement apparently is June 20, 1941, and the principal is fifteen thousand dollars. I'd like to offer this note in evidence.

Mr. Jansen: No objection.

The Court: Very well. It may become the Plaintiff's Exhibit "K."

The Clerk: Exhibit "K."

The Court: Yes. "J" was the certificate of expatriation.

(Testimony of Kaname Fujino.)

(Plaintiff's Exhibit "K" was received in evidence.)

[Plaintiff's Exhibit "K" is a Photostat appearing at page 514.]

Q. (By Mr. Beebe): According to your recollection, then, that signature was placed on the note some time in May of 1941, would you say?

A. Yes.

Q. And was requested by the bank, did I understand you to say that? A. Yes.

Q. What official in the bank, if you know his name, did you deal with at that time, Kaname?

A. Most likely Mr. Gramberg.

Q. Mr. Gramberg, G-r-a-m-b-e-r-g, is that correct? A. Yes.

Q. I see.

A. I don't know whom I went to at that time but he is about the only one I know in there. [161]

Q. Now, what was done after execution or after you recorded that deed? I'll withdraw that. Oahu Junk Company, was that operating the business on the property, the subject matter of that deed?

A. Beg your pardon?

Q. Was the Oahu Junk Company doing business on the property conveyed to you by the deed that you have just seen? A. Yes.

Q. And after the deed was given to you and placed of record, did Oahu Junk Company pay you any rent or didn't it?

A. Yes, I received rental.

(Testimony of Kaname Fujino.)

Q. You received rental, did you?

A. From the Oahu Junk.

Q. How much per month?

A. Three hundred dollars.

Q. For how long a period of time?

A. Oh, until it was investigated, so until July '43.

Q. Until July of 1943? A. Yes.

Q. And what was done by you with the funds received from that rental?

A. Oh, I put it in my own check account.

Q. I see. Now, how do you consider that property? Do you consider it your own or do you consider it your father's or anybody else's? [162]

Mr. Jansen: That is objected to, if it please the Court. It is calling for a conclusion of the witness.

Mr. Beebe: I think perhaps counsel is correct.

Q. State whether or not you at any time had any agreement with your father or anybody else to the effect that you would hold this property for him until after the war was over?

A. No, I never had no agreement whatsoever to that effect.

Q. And the income from the property you took?

A. Yes, I used——

Q. Used it as your own, is that correct?

A. Yes.

Q. Do you know Mr. Tsutsumi and Mr. Tsuda?

A. Yes, I do.

Q. How long have you known them, Kaname?

A. Oh, since I was a small child.

(Testimony of Kaname Fujino.)

Q. Ever since you were a small child? Do you know where they were born? A. In Hawaii.

Q. Both of them? A. Yes.

Q. Do you know Mr. Yamamoto, did you know Mr. Yamamoto? Seichi, is that his name?

A. Seitaro.

Q. Seitaro Yamamoto. And how long have you known Mr. [163] Yamamoto?

A. Ever since I was a child.

Q. Is Mr. Yamamoto living or dead?

A. Dead.

Q. Do you know where he died or when he died?

A. He died in Hongkong.

Q. Hongkong, China? A. Yes.

Q. Approximately when?

A. I think it was in August 10th of 1941, about that time.

Q. Tell the Court the relationship, as you know it, that existed between Yamamoto and your father?

A. He was one of the oldest employees. He was my father's advisor and my father's confident.

Q. What's that?

A. He was my father's advisor and one of the oldest employees.

Q. Now, state whether or not your father wrote English? Did your father write English?

A. No.

Q. What could he write at all?

A. He wrote in Japanese.

Q. And do you know enough about Yamamoto, enough to know whether he wrote English? [164]

•

(Testimony of Kaname Fujino.)

A. No, I don't think. Maybe just sign his signature.

Q. Have you endeavored or have you gone through the files of the Oahu Junk Company or through any of the desks of any of the officers to ascertain whether or not there was any correspondence passing between your father and anybody here relative to the property, the subject matter of this suit?

A. Yes, I did.

Q. And have you been able to find anything pertaining to the transfer of this property to you?

A. Just the ones that you have, Mr. Beebe.

Q. Directing your attention to two—for want of a better expression I will say two letters, written in Japanese characters, one of them dated January 31, 1941, consisting of one, two, three, four, five pages, I will ask you if you have ever seen this letter and those pages, five in number? (Showing a document to the witness).

A. Yes.

Q. Where did you obtain or see that letter, Kaname?

A. Oh, I found it in Mr. Yamamoto's desk.

Q. Now, did Mr. Yamamoto have a desk at the Oahu Junk Company?

A. Yes, he had.

Q. And when you say Mr. Yamamoto you mean Mr. Seitaro Yamamoto?

A. Yes.

Q. And in whose handwriting is that letter or those five [165] pages?

A. It is in my father's handwriting.

Q. You say your father could write?

A. Yes.

Q. And you say that is your father's handwriting—correct?

A. Yes.

(Testimony of Kaname Fujino.)

Mr. Beebe: At this time, if your Honor please, I would like to offer this letter in evidence, and I might tell your Honor that photostatic copies of the letter have heretofore been furnished Mr. Jansen.

The Court: Does a translation accompany it? Do you have a translation accompanying it?

Mr. Beebe: I'll follow that with a translation.

Mr. Jansen: I have no objection to the original Japanese. I am not sure about the translation.

The Court: Just a moment. Are you going to produce the translation separately?

Mr. Beebe: Yes, I believe so.

The Court: Well, we'd better get this marked. The letter for which a translation is to be supplied may become Exhibit "K," or rather "L," Mr. Clerk.

The Clerk: "L."

(Plaintiff's Exhibit "L" was received in evidence.)

Mr. Beebe: January 16, 1941, is that?

The Court: Thirty-first. [166]

Mr. Jansen: I might say, if it please the Court, that we had translations of both of these letters; that one that is now in evidence and the other one, made by Professor Uyebara, who is in charge of the Japanese Language School at the University of Hawaii. If Counsel will let me compare his translations with the one that was prepared by the professor, maybe we can agree.

Mr. Beebe: That is all right. May we take a recess? This is a good time for a recess.

(Testimony of Kaname Fujino.)

The Court: Yes, with one slight correction on the record: We don't have a Japanese Language School at the University.

Mr. Jansen: I don't mean that. I mean he is a professor at the school.

(A short recess was taken at 2:30 p.m.)

After Recess

Mr. Beebe: If your Honor please, it is perhaps usual in cases of this kind where translations come in, for we seem to be farther apart after our conference than we were when your Honor was so kind as to take a recess. I have suggested to Mr. Jansen that we will go over our translations and his translations, if necessary obtain the services of some person whom we consider an expert, and see if we can get our translations together, or at least limit our questions to one or two other points.

The Court: All right.

Mr. Beebe: Mr. Jansen agreed to that. It doesn't seem, [167] if your Honor please, that we will progress any further this afternoon, and if your Honor has no objection I would suggest a recess, then, until two o'clock Monday.

The Court: On Monday, very well. You may save time by doing that. So I will do just that.

Mr. Beebe: I believe we will all save time.

The Court: All right. This case, then, stands adjourned until Monday at two o'clock, and the Court for the day.

(The Court adjourned at 3:15 o'clock, p.m.)

I, Albert Grain, Official Court Reporter, U. S. District Court, Honolulu, T. H., do hereby certify as follows:

That the foregoing is a true and correct transcript of proceedings in Civil No. 704, Kaname Fujino vs. Tom C. Clark, held in the above-named court before the Hon. J. Frank McLaughlin, Judge, on October 31, 1946; that same was transcribed by me from my stenographic notes of said case.

December 18, 1946.

/s/ ALBERT GRAIN. [169]

The within-entitled matter came duly on for further hearing on Wednesday, November 6th, 1946, at the hour of 9 o'clock a.m., all parties being present as before, whereupon the following further proceedings were had and done and testimony taken:

(R. N. Linn was duly sworn to act as court reporter in this cause, in the absence of the official reporter.)

The Court: Are you parties ready for further trial?

Mr. Beebe: Yes, your Honor.

Mr. Jansen: Yes.

The Court: I believe Mr. Fujino was on the stand when we last adjourned, and we had stumbled over a translation problem at that time.

Mr. Jansen: Yes.

Mr. Beebe: If your Honor please, at the close of the last session we were referring to Exhibit

"L," and either myself or your Honor made a statement in the record to the effect that the letter was dated as of January 31, of the year 1941. Factually, and I think Mr. Jansen will agree, the letter was dated January 16th 1941, and the stamp-mark on it of January 31, 1941, is the date of its receipt here in Honolulu.

The Court: So the correct date of its writing is January 16, 1941, and the date of the receipt is January 31, 1941?

Mr. Beebe: Yes.

The Court: All right. [170]

Mr. Beebe: During the recess, if your Honor please, we agreed to a translation of this letter of January 16th, 1941, which is Exhibit "L." If your Honor cares to have me do so I can read it, and offer the translation, or I will offer the translation in evidence, and ask that it be given an appropriate letter.

The Court: I think it should be marked as part of Exhibit "L."

Mr. Beebe: All right, your Honor.

The Court: Do you think it would be helpful if you read it, also, so that we all know what it contained.

Mr. Beebe: I believe so, if your Honor please.

Clerk: Exhibit L-1.

(Document offered is received and marked:
"Petitioner's Exhibit L-1.")

[Petitioner's Exhibit L-1 set out on pages
515 to 517.]

Mr. Beebe: I will read it, beginning at the upper lefthand corner.

(Mr. Beebe starts reading Exhibit L-1.)

The Court: Do you want the reporter to take it down as you read it, too?

Mr. Beebe: I don't think so.

(Mr. Beebe reads document.)

Mr. Beebe: He made a mistake here. (Shows to Mr. Jansen).

The Court: Is it particularly pertinent?

Mr. Beebe: I don't think it is pertinent at all, if your Honor please. [171]

We are primarily concerned with the postscript.

The Court: Yes. Very well.

KANAME FUJINO

the plaintiff herein, resumed the stand for further examination and testified as follows:

Direct Examination

(Continued)

By Mr. Beebe:

Q. Now, as I recall, at the last hearing, Kaname, your attention was directed to a letter of February 20, 1941, and this letter being signed by "Takeo Fujino"? A. Yes.

Q. And what relationship is there between yourself, your father and Takeo Fujino?

A. Takeo Fujino was my cousin.

Q. And Takeo lived where?

A. With my father.

(Testimony of Kaname Fujino.)

Q. And do you know Takeo's handwriting?

A. Yes, I do.

Q. Directing your attention to a letter written in Japanese characters, having at its upper left-hand margin some Japanese characters, followed by, I think, the numeral "16" and then followed by another Japanese character and the numeral "2," followed by another Japanese character with the numeral "20," I will ask you in whose handwriting that letter is.

A. This is in the handwriting of my cousin, Takeo. [172]

Q. Now, have you seen Takeo write, and seen correspondence from Takeo? A. Yes.

Q. And you therefore know that that is in his handwriting, do you?

A. Yes, it is his handwriting.

The Court: The translation is agreed upon?

Mr. Jansen: Yes, your Honor.

Mr. Beebe: Yes, the translation is agreed upon, if your Honor please, so I will offer the Japanese letter and the translation and ask that it be marked for identification.

The Court: It may be marked for identification. Mark it "M" for identification, and "M-1" for identification, for the translation, and then if it comes in we can just cut off the identification symbol.

(Documents offered in evidence are received and marked: "Plaintiff's Exhibits M and M-1 for identification," respectively.)

(Testimony of Kaname Fujino.)

Mr. Beebe: At this time I will offer it in evidence, if your Honor please, just to see what the United States Attorney is going to do about it.

Mr. Jansen: Oh, I have no objection.

The Court: All right. Take off from M and M-1 the words "for identification."

(Documents marked: Plaintiff's Exhibits "M" and "M-1" respectively.) [173]

[Plaintiff's Exhibit M-1 set out on page 518.]

Mr. Jansen: Except, I want to point out to the Court, that it is true with this exhibit, as well as with Exhibit L, that the matter in brackets is excepted—it is not a part of the literal translation, rather. In "L" there are two or three matters in brackets, in the translation. In "M-1" there are three items in brackets and those items are supplied.

The Court: Well, with regard to the Exhibit "L," and now "M," are these matters in brackets controversial?

Mr. Beebe: No, I think we have agreed on them. We have anticipated calling the Court's attention to the supplied portions, and to that portion which was a literal translation of the quoted telegram.

The Court: All right.

Mr. Beebe: At this time, if your Honor please, I will read the February 20th translation—Exhibit "M," leaving off the upper left-hand corner. It is dated February 20, 1941.

(Testimony of Kaname Fujino.)

(Mr. Beebe reads as indicated.)

Mr. Beebe: As I understand it, if your Honor please, the words or word "tube"—appearing in brackets, after "black"—

Mr. Jansen: There is no controversy about that.

Mr. Beebe: That has been added. And then that a literal translation of the last sentence of the quoted telegram is: "Unless you send, it is not possible to change land to Master Kaname," and there has been added the language in brackets: "the ownership or title of" and that would be after "change," [174] and then there is an "it," prior to the "it" in that paragraph, that has been added, after the word "send."

The Court: Do I understand from that letter the person who wrote it in Japan had received a radiogram which he is quoting in that letter?

Mr. Beebe: Yes, your Honor.

The Court: And signed by this cousin? Is it signed by the cousin "for"?

Mr. Beebe: "Written by" I think is the exact language.

The Court: Is there anything to indicate that it is written for Yutaro Fujino?

Mr. Jansen: From his printed stationery, I think.

The Court: It appears from the heading that it would be his stationery, but the man might have borrowed a piece of paper.

Q. Now you heard the question propounded by the Court, did you not, Kaname? A. Yes.

(Testimony of Kaname Fujino.)

Q. Can you answer that question propounded by the Court?

A. Yes, Takeo was my father's secretary. He wrote some of these letters. Of course my father looked through. And "daihitsu" in Japanese characters, that means "written for" Yotaro Fujino.

Q. (By the Court): It means what; secretary to the father?

A. "Daihitsu" means "write for." [175]

Q. (By Mr. Beebe): "Write for"?

A. Yes.

Q. Specifically, then, there is no signature of your father on this Exhibit M-1? A. No.

Q. And is there any reference to your father?

A. Yes; this is his stationery.

Q. That is, the hieroglyphics, the Japanese hieroglyphics, on the right-hand margin of this letter, are your father's name, is that correct?

A. Yes.

Q. I notice that in the 9th or 10th column there is a pencil mark alongside of the Japanese hieroglyphics. What is that hieroglyphic?

A. That is "kirikae"—(spelling) "k-i-r-i-k-a-e."

Q. And "kirikae" means what in English?

A. To change or transfer.

Mr. Jansen: I thought we had agreed on that.

Mr. Beebe: That's right.

Mr. Jansen: I thought we had agreed on "change." And we have agreed on the material that has been supplied by us; that is, both sides?

Mr. Beebe: That's right.

(Testimony of Kaname Fujino.)

Mr. Jansen: But the other, without the brackets, is the written translation of the cable that was sent.

Mr. Beebe: Yes, "kirikae" we have agreed is "change" and then we have interpolated "the ownership or title of."

Q. Now, at the time this transfer was made to you, the transfér as indicated by the deed in evidence, did you make any return of any kind to any Federal body or organization? A. Yes.

Q. Directing your attention to two forms in green, the first having stamped on it "Client's copy" and having at its heading in the middle, "United States gift tax return, Calendar year 1941; donor, Yotaro Fujino," and the second, "Gift tax, donee, or trustee's information; return of gift," and then donor's name, Yotaro Fujino, and donee's name, "Kaname Fujino, 1217 North King street," are these copies of the original returns made at the time of the transfer of the land involved, to you?

A. Yes.

Q. And the check attached, to Collector of Internal Revenue, which is on the Bishop National Bank of Hawaii, dated January 16, 1942, being for the amount of 779.63, do you know whether or not that check was paid out at the time these returns were made? A. Yes.

Mr. Jansen: No objection.

Mr. Beebe: I will offer the check, together with the two returns, in evidence, if your Honor please. May I ask that they [177] be appropriately marked.

(Testimony of Kaname Fujino.)

The Court: They may be marked. I think you had better call the green paper Exhibit "N" and the check itself "N-1".

(Documents offered in evidence are received and marked: Plaintiff's Exhibits "N" and "N-1," respectively.)

[Plaintiff's Exhibits N and N-1 are Photo-stats appearing at Pages 519 to 524.]

Q. Now, Kaname, at any time, either prior to or after the deed to you, which is Exhibit H in evidence, did you have any agreement or understanding with anyone that you would later return the property covered by that deed to your father or to anyone else? A. No.

Mr. Beebe: I think that is all, if the Court please.

The Court: Cross-examination.

Cross-Examination

By Mr. Jansen:

Q. Now, Kaname, Mr. Beebe asked you if at the time you received the transfer of this land you made a gift tax return, and you answered "yes." Is that correct? A. Yes.

Q. Now, you did not make this gift tax return at the time you received the deed, did you?

A. No.

Q. It was a year later, was it not, in 1942?

A. I found out after I came back that I had the

(Testimony of Kaname Fujino.)

records, [178] that our accountant, Tennent & Greaney, had filed them for me.

Q. What was that?

A. After I came back I found out that the gift tax had been filed for me.

Q. After you came back you found out this gift tax had been filed for you? A. Yes.

Q. You came back in 1941, in May, didn't you?

A. Yes.

Q. And the gift tax was not filed until March 1942, was it? A. A year later.

Q. In fact, it was paid by check dated March 16, 1942? A. Yes.

Q. And the return shows the date here, at the place where the oath is to be filled in, of March, 1942? A. Yes.

Q. And it was in March, 1942, that this form, Exhibit N, and the check for the gift tax, were filed—or were filled out and were turned in, wasn't it? A. Yes.

Q. That was about nine months after you got back from Japan, wasn't it? A. Yes.

Q. Now you did not pay the tax on this, this gift tax, did [179] you? A. No.

Q. You paid it out of your father's funds?

A. Yes.

The Court: Under the Federal law from whom is the tax due, the giver or the receiver, Mr. Jansen?

Mr. Jansen: Frankly, your Honor, I am not sure.

(Testimony of Kaname Fujino.)

The Court: I haven't looked it up either, but I would presume it would be the donor.

Q. Now, Kaname, when you were fourteen years old you went to Japan? A. Fifteen.

Q. Fifteen? A. Yes.

Q. You were actually 21 years old on February 23, 1940—is that the date? A. Yes.

Q. And you went to Japan in 1934?

A. Yes.

Q. So you were fifteen? A. Yes.

Q. That is, six years earlier? A. Yes.

Q. And you stayed in Japan from the time you were fifteen years of age until you were a little over twenty-two years of age? [180] A. Yes.

Q. And during all of that time you went to school in Japan? A. Yes.

Q. And what was the name of that school?

A. Waseda Business School.

Q. Waseda Business School? A. Yes.

A. And at the business school I presume you learned to keep books? A. Yes.

Q. You learned typewriting? A. Yes.

Q. Shortland, or anything like that; the usual business course? A. Yes.

Q. And of course you learned the Japanese language; that is, the writing of it in more detail than you had known before? A. Yes.

Q. And when you were twenty-two, in the early part of 1941, your father wanted you to stay in Japan and go to the Waseda University?

A. Yes.

(Testimony of Kaname Fujino.)

Q. And you wanted to come to the United States, to Hawaii [181] or to the mainland, and go to school here? A. Yes.

Q. That is what you testified? A. Yes.

Q. If you had gone to Waseda University how long would you have continued in school?

A. Another six years.

Q. Another six years? A. Yes.

Q. And coming here to Hawaii, or to the mainland, if you had gone to school, how long would you have continued in school? A. Four years?

Q. Four years? A. Yes.

Q. So it was your plan when you left Japan to come to Hawaii and continue in school for at least four years? A. Yes.

Q. And I believe after that time, after the four-year period was out, you had intended to join your father in his business.

A. I intended to run the Oahu Junk Company.

Q. After the four-year's course of school?

A. Yes.

Q. Did you and your father have any misunderstanding [182] about your going to the Waseda University or coming here to school?

A. No, he just left it up to me.

Q. He left it up to you? A. Yes.

Q. And he wanted you to go there, and you wanted to go here? A. Yes.

Q. Now when you were in Japan and attending the Waseda Business School were you living at your father's home? A. Yes.

(Testimony of Kaname Fujino.)

Q. Were you doing any work at all?

A. No, I just studied.

Q. Did your father have any other place of business than his home? A. No.

Q. In Japan? A. No.

Q. He continued his business with the Oahu Junk Company from his home in Japan?

A. Yes.

Q. Did you ever handle any of his correspondence with the Oahu Junk Company? A. No.

Q. Your cousin, Patao, was your father's secretary? [183] A. Yes, he wrote letters.

Q. Did your father have any other employees in Japan?

A. Yes, I think he had some other people writing letters for him.

Q. Writing letters? A. Yes.

Q. Aside from actually writing letters, did he have any other employees; people doing anything else besides handling his correspondence?

A. No, I don't think so.

Q. And when you were attending school at Waseda Business School did you come home every night; sleep at home every night? A. Yes.

Q. Did you eat all of your meals at home?

A. Yes, unless I go to my friends place.

Q. Oh, yes. And did you have occasion to observe what correspondence there was between your father and the Oahu Junk Company here in Hawaii?

(Testimony of Kaname Fujino.)

A. Well, I just saw the envelopes, and the letters come in, but I never did help him write correspondence, because he just told me to do my own studying. He didn't care for me to help him out.

Q. Did he have any books of account or anything like that in Japan, in his home? [184]

A. I think so.

Q. Did you ever have anything to do with working on these books of account? A. No.

Q. Did he have any other items, ledgers, or any other books, in connection with his business of the Oahu Junk Company in Japan, that you know of?

A. I did not get to look at them close.

Q. Then, if I understand you correctly, you went to school and attended to your studies, and had absolutely nothing to do with your father's business? A. Yes.

Q. He never told you what he had or what he was doing; what he was buying, or what he was selling?

A. Well, just generally, I used to——

Q. You knew that he was in business?

A. Yes.

Q. But he never discussed any of the details of the business with you? A. No.

Q. He never discussed any of the books, the accounts receivable or the accounts payable; any of the correspondence; any of the shipments; any of the items or details of the business of the Oahu Junk Company with you? A. No.

(Testimony of Kaname Fujino.)

Q. Is that correct? [185] A. Yes.

Q. So when you left for the mainland you were absolutely ignorant of any of the details or affairs of the Oahu Junk Company?

A. Yes; just generally.

The Court: You used the word "mainland" there——

Mr. Jansen: I mean, the mainland of the United States.

Q. I mean, when you left for the United States?

A. Yes.

Q. That is,—for Hawaii. A. Yes.

Q. You were absolutely ignorant then of any details of the business of the Oahu Junk Company?

A. Yes.

Q. You knew that you had had 200 shares of stock issued to you,—or did you know that?

A. Yes, I recall his saying that to me.

Q. You recall that? A. Yes.

Q. Did you talk much about it with your father?

A. Oh, not to go into the details.

Q. He just said to you: "I have issued 200 shares of stock to you?" A. Yes.

Q. And I believe you testified the other day he said: [186] "You have not proven yourself yet, so I am going to have you give me a note for twenty thousand dollars for that stock?"

A. Yes.

Q. Is that right? A. Yes.

Q. Did he say anything more about that stock?

A. No, that is about all.

(Testimony of Kaname Fujino.)

Q. He just announced that to you; he said "I have issued 200 shares of stock. You haven't proven yourself, and so you have got to pay me under this note twenty thousand dollars," or you gave him a note for twenty thousand dollars for the stock?

A. Yes; he knew I was going to school; he told me I was to study hard.

Q. And that was the reason you had sent this power-of-attorney in December to Tsuda and Tsutsumi, so that they could execute this note for twenty thousand dollars?

A. Yes.

Q. Did you have any other reason for sending that power-of-attorney?

A. I don't know.

Q. You don't know. Well, you and your mother executed powers-of-attorney at the same time, in December, 1940, didn't you?

A. Yes, about the same time. [187]

Q. Do you know who prepared those powers?

A. No.

Q. You don't know anything about that?

A. Yes.

Q. When did you first see the power-of-attorney that you signed?

A. I believe it was in December.

Q. Who showed it to you, your father?

A. I think so.

Q. He showed you this power and said "I have got this power from Hawaii, and I want you to sign it," is that what you did?

(Testimony of Kaname Fujino.)

A. Well, he told me to go to the American Consulate to have it signed there.

Q. But before he showed it to you you had never seen it before? A. Yes.

Q. Well, when you say "yes" you mean "no"; you meant that you had not seen it before, before your father showed it to you? A. Yes.

The Court: I think we better go over it again.

Q. Had you seen the power-of-attorney before your father showed it to you and asked you to go to the Consulate? A. No. [188]

Q. Did your father say anything about the power except "Take it; go to the American Consul and have it verified" or acknowledged, or whatever he instructed you to do? A. No.

Q. He said nothing else? A. No.

Q. When did he first tell you,—or when did you first learn that the power was sent so that the attorneys in fact, Tsuda and Tsutsumi, could execute a note for you? When did you first learn that?

A. When I first found out that I am to sign it?

Q. When did you first find out that you were to sign the power-of-attorney?

A. When I saw it. I knew my father was saying he was going to incorporate the business.

Q. You had learned that?

A. He was giving me some shares.

Q. He had mentioned it before?

A. About that time.

Q. That he wanted you to sign a note for twenty thousand? A. Yes.

(Testimony of Kaname Fujino.)

Q. And that is why you were to send this power-of-attorney? A. Yes.

Q. And he told you what to do? [189]

A. He told me to go to the American Consulate.

Q. I mean, he said "I am incorporating"; that is one thing he said? A. Yes.

Q. And he said "I am going to issue some shares of stock to you, Kaname"; that is another thing he said, and he said "You will have to give me a note back for twenty thousand dollars"; that is another thing he said, or this power-of-attorney, so that you can give me a note back for twenty thousand? A. Yes.

Q. Now you were to go to the American Consulate and get it fixed up? A. Yes; I did.

Q. Did he say anything else, or explain anything else about the details of the incorporation, or the notes, or any of the transactions, at that time?

A. The only thing I recall was——

The Court: Speak a bit louder, please.

A. He said eventually he will give me,—give it all to me.

Q. Some day? A. Yes.

Q. Some day he will give it all to you?

A. Yes, but since I was going to school, and I did not show my merits yet, so he told me to study hard and when I [190] come back, after I go to school, help in that store.

Q. Some day, after years of time, and you prove—— A. Maybe in a year or so.

(Testimony of Kaname Fujino.)

Q. Maybe he will give it to you?

A. I can show I can run his business, he wanted to give it to me.

Q. I see. Are you the eldest of your family, your father's children? A. No.

Q. You were 22 in 1941, in February?

A. Yes.

Q. You have two sisters? A. Yes.

Q. And did your father and mother have any other children living now? A. No.

Q. So, in the family, the children of your father and mother, are you and your two sisters?

A. Yes.

Q. And how old are your sisters?

A. Now?

Q. Well, yes; now? A. About 33 and 32.

Q. About 33 and 32? A. About that. [191]

Q. Four or five years older than you?

A. Yes.

Q. So, in 1941, when you were 22, your sisters were four or five years older; 26 or 27?

A. Yes, about that age.

Q. They are about a year apart? A. Yes.

Q. Did your father tell you why he was taking notes from your sisters for the stock?

A. No, I don't know about them.

Q. Your sisters were married then, were they not? A. 1940? Yes.

Q. One of them had a baby?

A. In February, yes.

(Testimony of Kaname Fujino.)

Q. And the other one was married, too?

A. I think just about married at that time.

Q. They were both over 21, is that correct?

A. Yes.

Q. And they were not going to school. Were their husbands working, do you know?

A. Yes.

Q. Did their husbands work for the Oahu Junk Company? A. Yes.

Q. They did? A. Yes. [192]

Q. And your father never mentioned anything about why he was taking notes back from your sisters?

A. I don't recall. He may have told me.

Q. In fact, your father really never discussed the business of the Oahu Junk Company with you, except to tell you what to do about this power-of-attorney and about the stock and the notes; that is correct, isn't it? A. Beg pardon?

Q. Well, let me start over again. Your father never discussed the business of the Oahu Junk Company with you? A. Not in detail.

Q. No. Did you hear the testimony of Mr. Muri-
kami? A. Yes, I did.

Q. In court. He said that your father told him in July of 1940 that he was going to take notes back from your sisters and from you so that he would have some measure of control over the stock. Do you understand that to be correct? A. Yes.

(Testimony of Kaname Fujino.)

Q. Now, Kaname, when you came back to Hawaii in May, 1941, you fully intended to go to school for a period of around four years?

A. Yes.

Q. And when you got to Hawaii in May, 1941, you learned that there was a deed here made out to you, is that correct? A. Yes. [193]

Q. Before you got to Hawaii in May, 1941, did you know that that deed was here for you?

A. Well, I knew my father told me he was giving me the real property, the land.

Q. And when was that?

A. Oh, just before the incorporation.

Q. At the same time as he talked to you about the stock? A. Yes.

Q. When he told you that you had not proved yourself yet and so he wanted notes back for the stock?

A. Yes, he said the business was being incorporated, but the land he was giving it to me.

Q. He told you that? A. Yes.

Q. Now, you answered Mr. Beebe's question the other day, last Thursday. He said to you: "Was there any agreement with your father that you would turn this land back after the war?" and you answered "Not to that effect." Do you remember that? A. No.

Q. Don't you remember answering like that?

A. I think, I recall, just I had no such agreement.

(Testimony of Kaname Fujino.)

Q. No agreement to that effect? A. Yes.

Q. What was the agreement?

A. We had no agreement. [194]

Q. Had no agreement. Now when you came back to Hawaii in May, 1941, did you start working for the Oahu Junk Company? A. Yes, I did.

Q. How soon after you came back?

A. Well, I was there.

Q. How soon was it, a month or two months?

A. Well, every day I was in there.

Q. You came back in May? A. Yes.

Q. Did you go to the Oahu Junk and start working right away?

A. My vacation. After about a week or two week's vacation.

Q. What kind of work did you do at Oahu Junk Company when you first started working?

A. I still did not know the business, so I just helped waiting on customers, and——

Q. Things like that?

A. Yes, some; simple.

Q. The business, you said last Thursday, was being run by Tsuda and Tsutsumi? A. Yes.

Q. They handled the entire business?

A. Yes. They are the manager and assistant manager.

Q. And they were in charge of all of the details and the [195] affairs of the business? A. Yes.

Q. They supervised the keeping of the books; the buying and selling? A. Yes.

(Testimony of Kaname Fujino.)

Q. You had nothing to do with the management of the business at all? A. No.

Q. You left that entirely to Tsuda and Tsutsumi? A. Yes.

Q. Now you testified, Kaname, last Thursday, that you got rent for this land from the Oahu Junk Company? A. Yes.

Q. When did you start drawing that rent?

A. As soon as I came back.

Q. As a matter of fact, Kaname, you did not get any rent until in September, 1941, did you?

A. Well, I was receiving some rent already.

Q. Do you know, as a matter of fact, that in the last part of August,—on August 22, 1941, you received your first check for rent?

A. Yes, I think—I don't know for how many months it accrued, yes.

Q. But up to that time no rent had been paid you?

A. I got mixed up. I used to collect through "Camp" rentals, [196] too.

Q. That is some rentals of your mother's property, is that what you mean? A. Yes.

Q. Now, Mr. Tsuda and Mr. Tsutsumi fixed the amount of rent to be paid by the Oahu Junk Company at three hundred dollars a month, didn't they?

A. Yes.

Q. You had nothing to do with fixing the actual rent that was to be paid, did you? A. No.

(Testimony of Kaname Fujino.)

Q. And the first check that was paid for rent was paid in August, 1941, after Tsuda and Tsutsumi told you what they would pay, is that correct? A. Yes.

Q. You put the rent, the three hundred dollars a month that Tsuda and Tsutsumi said they would pay you for rent, into your own checking account?

A. Yes.

Q. And what did you do with it after you put it in the checking account?

A. I paid the expenses; repair and water bill, and I was going to college, and I use it for my own expenses and spending money; my college expenses.

Q. What college were you going to? [197]

A. University of Hawaii.

Q. How long did you go there?

A. I went about a year and one-half.

Q. Your mother had told you to collect the rent from her property for your college expenses, didn't she? A. Yes. I put it all in one.

Q. All in one?

A. That is what I mean; all in one.

Q. And most of that money, the three hundred dollars a month, you used to make repairs, pay taxes——

A. Pay taxes.

Q. Did you pay the taxes?

A. For the Oahu Junk Company property, no.

Q. You did not pay the real property taxes? Didn't you pay the taxes in 1942? Or, 1943?

A. At the Camp I did.

Q. And the "Camp"; you mean that is your mother's property? A. Yes.

(Testimony of Kaname Fujino.)

Q. But on the real property that the Oahu Junk Company was on?

A. On that one the corporation was supposed to pay the rent, water bill and electric bill, and if there were repairs, and insurance.

Q. You say the corporation was to pay the rent, the water bill and electric bill, repairs and insurance? [198]

A. Yes.

Q. And you told us a minute ago that you had paid the water bill, repairs and so on, amounting to three hundred dollars.

A. I threw it all in one thing, together. That is the Camp, and I had another property that I used to collect a little; used to pay those, but the corporation used to pay their own.

Q. You mean the corporation paid the water bills?

A. Yes.

Q. And the electric bill and repairs, and the taxes.

A. Yes.

Q. And all of the upkeep of the real property?

A. Yes, that the corporation was using.

Q. How about the real property that the corporation was not using? Did they pay that, too?

A. No.

Q. Are you familiar with the location of these pieces of real estate?

A. Yes.

Q. Well, how about this piece Number 6; how about the taxes on that?

A. That I did, because I collected the rental.

Q. Well, what kind of property is that?

A. That is rental property. [199]

Q. Is there a house on it?

A. Yes.

(Testimony of Kaname Fujino.)

Q. And who lives there? A. Mr. Kohama.

Q. Mr. Kohama? A. Yes.

Q. And you say you paid the taxes on that piece of real property? A. Yes.

Q. Are you sure of that? A. Yes.

Q. And how did you pay them?

A. From the rental income.

Q. From the rental income? A. Yes.

Q. How about this piece of property, parcel number 5?

A. Oh, these the corporation paid.

Q. Well, did the corporation use parcel number 5? A. Yes, the corporation used.

Q. I understood this parcel was being rented to some contractor? A. Yes, that is just rental.

Q. Oh, I see. And in 1941, and 1942, and 1943, the corporation used it? A. Yes. [200]

Q. And they paid the taxes, you say, on parcels 1, 2, 3, 4 and 5? A. Yes.

Q. And you paid the taxes on parcel number 6? A. Yes.

Mr. Beebe: For the purpose of the record, might the record show that in these references, counsel is referring to Defendant's Exhibits 1, 2 and 3.

Mr. Jansen: Oh, yes, certainly. The parcels are identified in Defendant's Exhibits 1, 2 and 3, and I have been showing you these three exhibits in discussing these various parcels with you, Kaname.

A. Yes.

Q. Correct? A. Yes.

Q. Did you have a written lease between you and the Oahu Junk Company? A. No.

(Testimony of Kaname Fujino.)

Q. You mean it was an oral understanding?

A. Yes.

Q. Well, did Tsuda and Tsutsumi tell you "We will pay you \$300 a month and pay the taxes and repairs and upkeep"? A. Yes.

Q. And you did not bargain about that at all; you said "That is all right"? [201] A. Yes.

Q. Now, Kaname, the Oahu Junk Company could not do this business unless they had this real estate, could they? A. I think so.

Q. You think they could? You mean, you think they could not do business without real estate?

A. Yes.

Q. Let me ask you a question, just to be sure. Could the Oahu Junk Company do business if they did not have this real estate?

A. Well, I don't have that much business mind, to be definite.

Q. Well, you are a director of the corporation now, aren't you? A. Yes, I am.

Q. And you have been connected with the business since 1941? A. Yes.

Q. But you are not able to say?

A. Well, it would put a hardship on the corporation if they didn't have the land.

Q. It would be a great hardship to the corporation if they didn't have the land? A. Yes.

Q. Now besides paying for your own schooling out of the [202] rent you gave money to your sisters, did you not?

A. Yes; looked after them.

(Testimony of Kaname Fujino.)

Q. You also took care of obligations of your mother and father? A. Yes.

Q. For example, you gave five hundred dollars to one of either Tsuda or Tsutsumi when he was married, out of this money? A. Yes.

Q. That was a gift not from you, but from your father and mother?

A. Yes, a family gift.

Q. A family gift. So out of the rent that you collected on this real estate you took care of your own expenses, and supplied money to your two sisters, and took care of obligations of your mother and father as they arose? A. Yes.

Q. And that you had understood with your father, when he gave you this land in 1941, that you were supposed to do that with it, is that correct? Did you understand that that is why you were being given the land, to take care of all these things, these expenses that would come up, and so on?

A. I don't know what you mean by that.

Q. When your father told you he was giving you this land, he also told you that you would have to pay for your schooling? [203] A. Yes.

Q. Help your sisters? A. Yes.

Q. Take care of his obligations? A. Yes.

Q. Take care of your mother's obligations?

A. Yes.

Q. All these things you said you have done, he told you you would have to do out of the land, is that correct? A. Yes.

(Testimony of Kaname Fujino.)

Q. In other words, what you rfather wanted you to do was to take his place here in Hawaii as if he were here doing it himself, since he was unable to be here; he wanted you to take his place and take this land?

A. Yes; he wanted me to be independent, too, to work here, and run the store.

Q. And the store, taking his place here?

A. Yes, he was getting old, and he was getting retired.

Q. And he wanted you to take his place here in Hawaii? A. Yes.

Q. Did he write to you from time to time after you left Japan? A. Yes, he wrote.

Q. Did you write back to him? A. Yes.

Q. Did he tell you about little things to do here and there; about this wedding present to give to this attorney-in-fact, and so on?

A. Yes, I wrote to him he was getting married, our friend, and I let him know our news.

Q. He wrote back and said "Give them \$500"?

A. Yes.

Q. And you wrote to him about different other details with regard to the land, and he wrote back and told you what to do, is that right?

A. Well, mostly it was about our family affairs.

Q. Mostly it was about the family and the obligations of the family, is that correct? By "obligations" I mean the things that come up?

A. Yes.

(Testimony of Kaname Fujino.)

Q. You were in school, your sisters were married, they needed money, and you paid out money for this wedding gift, and paid out money for other things, and all these things you discussed with your father in your letters, back and forth? A. Yes.

Q. And he advised you, and instructed you what to do? A. Yes.

Q. And it was pursuant to his instructions: it was following his instructions, for example, that you gave the \$500, as a wedding gift to the attorney-in-fact—to that attorney-in-fact? [205] Which one was it? A. The youngest brother.

Q. Who?

A. Yes, it was the youngest brother of Mr. Tsutsumi.

Q. The youngest brother of Tsutsumi?

A. Yes.

Q. And it was your father's instruction that you give him this \$500 for a wedding gift?

A. Yes.

Q. Out of this money that you were accumulating from this rent? A. Yes, that's true.

Q. Do you remember any other items that your father instructed you about in connection with the money that you had in this bank account?

A. No.

Q. Were there other items?

A. No; I don't know.

Q. You do not remember particularly other items, but you wrote back and forth regularly to your father, did you not?

(Testimony of Kaname Fujino.)

A. Yes, every now and then.

Q. Every now and then. When, in 1941, you received this deed, your father was 55, is that right?

A. Yes, about that.

Q. He was living in Japan? [206] A. Yes.

Q. How old was your mother?

A. About fifty; five years younger.

Q. Fifty? A. Yes.

Q. Your mother had given deeds to her land some four or five years before, to you, had she not?

A. Yes.

Q. But she kept to herself a life estate, didn't she? A. Yes.

Q. You know what I am talking about, don't you? A. Yes.

Q. Then when you came to this country she said "You go ahead and collect the rents and handle it all together; you take care of the family affairs over in Hawaii?" A. Yes.

Q. So when you came here you had these instructions from both your father and your mother to that effect?

A. Well, at that time I didn't know about the life estate.

Q. You didn't know about what?

A. The life estate.

Q. You didn't know about the life estate?

A. Yes.

Q. When did you find out about that?

A. When the Alien Property Custodian told me to make a [207] report on it.

(Testimony of Kaname Fujino.)

Q. You mean you did not know? A. Yes.

Q. Who had collected the rent while you were living in Japan? A. Oh, the attorneys-in-fact.

Q. But when you got over to this country you told them you would collect the rent from now on?

A. Yes.

Q. Yamamoto, is that the old man's name, who died? A. Yes.

Q. Was he here in this country when you came in May, 1941? A. No.

Q. Where was he then? A. In the Orient.

Q. In the Orient. Do you know when he had left for the Orient?

A. I didn't know the exact date, but I remember seeing him just before I left there.

Q. Seeing him in the Orient? A. Yes.

Q. He died in the Orient, did he? A. Yes.

Q. And the correspondence you saw that was carried on before you came back to Hawaii was mostly between Yamamomto and [208] your father?

A. Yes.

Q. How did you know that?

A. Well, at least I could tell it was Yamamoto. The letters came in. I knew that was not 'Tsuda's writing, on the envelope, address.

Q. Did Yamamoto die while you were still in Japan? A. No, while I was here.

Q. After you had come back? A. Yes.

(Testimony of Kaname Fujino.)

Q. Well, who corresponded with your father after you got here, between the Oahu Junk Company and your father?

A. I don't think—I don't know, after Yama-moto went there, they went to Shanghai and the Philippines, so we did not get a chance to write to them much?

Q. Well, later on?

A. They sent from their side, though.

Q. What is that?

A. They sent a letter from their side.

Q. Of course after December, 1941, there are no letters at all passing back and forth, is that correct?

A. Yes.

Q. But between the deed, in May, 1941, and December, 1941, you had written to your father and had heard back from your father? [209]

A. Yes.

Q. Once or twice, maybe, or even more than that?

A. Yes.

Q. And among other things he told you to give this \$500 to Tsutsumi's brother as wedding present?

A. Yes.

Q. And you did?

A. Yes.

Q. Now were you the one, Kaname, that looked for the correspondence the other day, before this case started?

A. Yes.

Q. And you found two letters that have been received in evidence, Exhibits L and M?

A. Yes.

Q. In the other testimony?

A. Yes.

(Testimony of Kaname Fujino.)

Q. Now, with Exhibit "M," there were two or three more pages when I first saw it. Were they all together when ou found it?

A. I just found them in a bunch, or folder.

Q. And you found "L," and that is the one that is written by your father personally? A. Yes.

Q. That is his handwriting? A. Yes. [210]

Q. And you found "M"? A. Yes.

Q. Now, the the first time I saw "M," this one (indicating), it was attached to these other pages that I am showing you now? A. Yes.

Q. Dated the 19th, is that right? A. Yes.

Q. Is that the way it was in the folder, all of them together?

A. I am not sure now. Anyway, a bunch of letters; I just went through and that is all I found pertaining to the land.

Q. I see.

A. It must have been together.

Q. In any event, you brought L and M to your counsel and then also these pages which I have just shown you, which are dated February 19th?

A. Yes.

Q. And you brought them all together to Mr. Beebe's office, did you? A. Yes.

Q. How many letters did you find besides L—that is the one over there (indicating) and "M," and these three pages?

A. Well, I had several more, but I went through to find out about this land transfer, and these were the only things I [211] could find, so these were the only ones I brought.

(Testimony of Kaname Fujino.)

Q. Where are the several more?

A. I have them in the store.

Q. The next time you come to court, or if we have a recess, could we get the others that you have?

A. I will bring, the next time.

Q. And were they all together in Yamamoto's desk?

A. Yes.

Q. Well, do these—the three pages that I have shown you, dated the 19th—does that also refer to the land?

A. No.

Q. How was it that you brought those, or was that because, as I suggest, they were attached to "M"?

A. Those were together.

Q. But one letter, M, was written on February 20th?

A. Yes.

Q. And these three pages that I have shown you were dated February 19th?

A. Yes.

Q. And is it not likely that they were sent in the same envelope?

A. Yes.

The Court: What year?

Mr. Jansen: 1941.

Q. That is 1941? [212]

A. Yes.

Q. Exhibit L has a stamp on it, 1941, and M, the Exhibit M, and these three pages that I am showing you, dated February 20, 1941, do not have any such stamp?

A. Yes.

Q. On that there is a stamp from the Oahu Junk Company—on Exhibit L?

A. Yes, I believe it must be.

(Testimony of Kaname Fujino.)

Q. So, outside of the fact that "M" and these three pages I have been discussing were together, there is nothing to indicate that they were received together, but you think they were received together, in that same envelope? A. Yes.

Q. These pages which are numbered 1, 2 and 3, of the letter dated February 19, 1941, were likewise written by Patao? A. Yes.

Q. Who, you say, was your father's secretary? A. Yes.

Mr. Jansen: May it please the Court, at this time I will offer the letter which has been identified by the witness, dated February 19, 1941, consisting of three pages, numbered 1, 2 and 3, written by Patao Fujino, for Yotaro Fujino, and ask that the original letter be marked as a defendant's exhibit, and we have agreed with counsel with regard to a translation, and we ask that that be lettered "A" of the [213] exhibit number, and we offer both.

Mr. Beebe: No objection, if your Honor please.

The Court: Very well. It may be marked as the government's exhibit next in order, with the translation being given an "A" marking. That is the February 19th letter?

Mr. Jansen: Yes, your Honor.

(Documents offered in evidence are received and marked: Defendant's Exhibits 5 and 5-A, respectively.)

[Defendant's Exhibit 5-A set out on pages 455 to 457.]

(Testimony of Kaname Fujino.)

Mr. Jansen: May it please the Court, I would like at this time to read the translation of this letter written by Takeo Fujino for Yotaro Fujino, and, incidentally, the translation is apparently signed "Yotaro" but I guess we will all agree it is written by Takeo.

Mr. Beebe: Yes.

(Mr. Jansen reads the exhibit referred to to the Court.)

Q. It is signed "Yotaro Fujino." Is that correct, did he actually sign your father's name?

A. No, he signed his name.

Q. But you know that it was Takeo's handwriting?

A. Here he has my father's name. (Indicating.)

Q. Right there? (Indicating.)

A. Yes. And at the end, "written by."

Q. You keep looking at Exhibit M.

A. Yes.

Q. We are talking now about a different exhibit, which is [214] a differently dated letter.

A. This is my writing; my father's name. (Indicating.)

Q. But you know that is Takeo's handwriting? (Indicating.)

A. Yes.

Q. And your father's name is written just as though he had signed it, but in fact it was signed for him by Takeo?

A. Yes.

(Testimony of Kaname Fujino.)

Q. Now, Kaname, you were in Japan in February, 1941? A. Yes.

Q. And did you know that your father had this correspondence between him and the Oahu Junk Company about these things, about scrap rubber to be shipped from here, and cement to be shipped back from Japan? A. Yes, roughly I knew.

Q. Roughly you knew? A. Yes.

Q. And you knew what he was talking about when he was talking of the strained relations between Japan and the United States.

A. I didn't know the details, but it was in there.

Q. You didn't know the details, but you knew that there existed some feeling of strained relations between Japan and the United States?

A. At that time, as for myself, I didn't think too much.

Q. Well, you were going to school? A. Yes.

Q. But I assume your father mentioned it from time to time; just casually, perhaps?

A. Maybe.

Q. In a general fashion. I don't mean he sat down and discussed politics or anything, but he mentioned it, and you know that he had a feeling about a strained relation? A. I don't know.

Q. Did he mention it?

A. I don't recall his mentioning to me about it. As for myself, I didn't think at that time that it was too strained.

Q. Your father, however, speaks of it in this letter? A. Yes.

(Testimony of Kaname Fujino.)

Q. Do you know how he wrote these letters that were written by Takeo? Did he tell him—did he dictate the letter to Takeo, or what did he do?

A. He just gave him the main points, I believe.

Q. Gave him the main points? A. Yes.

Q. And tell him to write the letter?

A. Yes.

Q. Do you know if your father would read the letter before it would go out? A. I believe so.

Q. You think he would? A. Yes. [216]

Q. And I assume if there was something in there that he didn't approve, he would call in Patao and change it? A. Yes.

Q. He would not have the letter go out unless he read it first, would he? A. I believe so.

Q. Yes, he would not. That is what you mean, isn't it. Let me ask you again, to make sure I get that straight. Would he permit a letter to go out without reading it? A. No.

Q. No? A. No.

The Court: We will take our recess at this time.

(A recess was taken at this point, and thereafter, all parties being present as before, the following further proceedings were had:)

Q. I think when we recessed, Kaname, we were talking about the strained relations between Japan and the United States. You said you had no opinion, or your opinion was not as strong about that as your father's?

(Testimony of Kaname Fujino.)

A. Yes. The way I felt, there wasn't too much strained relations, and, in fact, even when I left, I didn't think—even the atmosphere there—I didn't think there would be any war. Of course there was, you know, a little talk about it. Of course there were a little strained, more than about a year [217] before.

Q. Well, it was worse than it was about a year before?

A. Yes, but we never think that a war would come.

Q. There was a certain amount of feeling on the part of the Japanese people in the way they thought they were being treated, wasn't there?

A. No, they didn't think to the point that there would be a war.

Q. I realize that, but there still was a feeling, running pretty high, that they were not being treated right by the United States?

A. No, I would not put it in that way.

Q. How would you put it?

A. Well, that it was a little more than a year ago, but that——

Q. It was a little worse than it had been the year before?

A. Yes, but not to the point that everybody was thinking that they would fight.

Q. I see. They had not reached that point yet?

A. Yes.

(Testimony of Kaname Fujino.)

Q. But one of the reasons why you came here to go to school, rather than in Japan, was because you were fearful that that might get worse, was it not?

A. No, because I just wanted to come back here. I wanted to come to Hawaii, my home. I had no intention of making [218] Tokio my permanent home. I knew I had everything in my estate here.

Q. Your father's estate was here? A. Yes.

Q. Your estate was here? A. Yes.

Q. Your fathers' estate was here, too?

A. Yes; I knew what he had he would give me, because I was the only son.

Q. It would eventually go to you?

A. Yes, I——

Q. But at that time your father was 55?

A. About that.

Q. One of the reasons why your father organized this corporation and transferred this land was because of that rising feeling in Japan, was it not?

A. I won't say that. 1940 I didn't think—I didn't feel that way.

Q. You didn't feel that way? A. No.

Q. Do you know whether or not your father felt that way?

A. No; none of those international affairs.

Q. He told you what he was going to do, and you just fell right in line with it, isn't that the way it was?

A. Yes, roughly, yes; he said he would give me some [219] shares, and I felt that he would give me.

(Testimony of Kaname Fujino.)

Q. Now when this land was transferred; that is, the date of the deed, in March, 1941, did you know what the land was worth? A. No.

Q. When Tsuda and Tsutsumi told you what rent they would pay, did you know what the land was worth?

A. Well, I knew it was worth several—thousands of dollars; I cannot say how much.

Q. I mean, were you able to form an opinion as to the reasonable value of the land at that time?

A. Oh, when they say three hundred, I think it was worth that much.

Q. But you have had no experience in that?

A. Oh, no.

Q. You accepted their statement? A. Yes.

Q. You did not question that at all?

A. No. Well, I cannot question them, the manager and assistant manager, and they are faithful for so many years; I don't think they would put anything over on me.

Q. You felt, though, you could not question them?

A. Yes, they were trusted, long-time employees.

Q. When you say "long-time employees" you mean long-time employees of your father? [220]

A. Yes.

Q. Now you got a check for rent, the first one, in August, 1941? A. Yes.

Q. And that was for six months, wasn't it?

A. I don't recall for how many months, but I knew for several months.

(Testimony of Kaname Fujino.)

Q. Back? A. Yes.

Q. It went back at least beyond May?

A. I think so.

Q. Ahead of May; it probably went back to March, 1941? A. Yes.

Q. And you put the eighteen hundred dollars in the bank? A. Yes.

Q. And then the next month you got another check for three months' rent, do you remember that? A. Something like that, yes.

Q. And that would be \$900? A. Yes.

Q. And you put that \$900 in the bank?

A. Yes.

Q. Now, how much of that eighteen and nine; that would be twenty-seven hundred——

A. Yes.

Q. How much of that did you send to your father? [221]

A. I never sent any money to him.

Q. You never sent any? A. No.

Q. You intended to send him some?

A. I never had such notions.

Q. Didn't you intend to send him some money?

A. No.

Q. In August or September, 1941?

A. No.

Q. Are you sure of that?

A. I don't—no.

Q. Well, did you or did you not intend to send him some money? A. No.

Q. You did not? A. No.

(Testimony of Kaname Fujino.)

Q. Was he getting any rents from any other property here in Hawaii? A. No.

Q. Was he getting any dividends from the corporation? A. No; at that time, no.

Q. Was he getting any salary from the corporation? A. No.

Q. Had he received any rents between December, 1940, when the corporation was formed, and March, 1941, when this deed [222] was executed, from the corporation? A. I don't know.

Q. You mean that you did not intend to send him any money in 1941, before the war started?

A. No. Well, he was well off; I didn't think why he should ask me.

Q. But you said his estate, his business, was really here in Hawaii? A. I said my estate.

Q. I thought you said your father's estate, too?

A. No, I said I had my estate in Hawaii.

Q. The only business your father had was the business of the Oahu Junk Company, wasn't it?

A. Yes.

Q. And that was located here in Hawaii?

A. Yes.

Q. The only income that he would receive would be income from the Oahu Junk Company, wouldn't it? A. I would not know.

Q. What is that? A. Well, I don't know.

Q. If your father had given you a letter and—had written a letter to you and told you to send him some money, you would have sent it, wouldn't you? A. He never did. [223]

(Testimony of Kaname Fujino.)

Q. If he had written to you and told you to send some from the rents you would have sent it, wouldn't you?

A. I didn't have the faintest idea to send him.

Q. If your father had written to you and told you to send money from the rents, you would have sent it, wouldn't you?

A. Maybe.

Q. Yes. Well, it is true, isn't it?

A. Yes.

Q. Yes. As a matter of fact, Mr. Yamamoto took over \$850 from your mother when he went to the Orient, didn't he; some eight hundred dollars; around that amount?

A. I think so.

Q. Out of rents that had been received?

A. Yes.

Q. From that property, her property, the property that had been deeded to you; that is correct, isn't it?

A. Yes.

Q. You didn't get any of that \$800, when you were in Japan, when he came there, did you?

A. No.

Q. And that was the property that you say you found out when the Custodian had vested it, that she had reserved a life estate?

A. Yes. [224]

Q. But, nevertheless, she collected this money, and Mr. Yamamoto brought her \$800 from the rents for that when he came to the Orient in 1941, didn't he?

A. Yes.

Q. And if your father had written to you and said, "Send me a thousand dollars from the rent," you would have sent it, wouldn't you?

A. Maybe.

(Testimony of Kaname Fujino.)

Q. Yes. Well, would you? A. Yes.

Q. "Yes"? A. Yes.

Q. You do not know of any property that your father owned, that is, property outside of the Oahu Junk Company, do you? A. No.

Q. Did he own the house that he lived in, in Japan? A. Yes.

Q. But he had no business there?

A. He had his house and lot.

Q. His house and lot? A. Yes.

Q. But other than that he had no other property in Japan? A. I don't think so.

Q. And no other business in Japan?

A. No. [225]

Q. And, if he had, he had it in the Oahu Junk Company here in Hawaii; that is correct, isn't it?

A. Yes.

Q. Now, Kaname, there is one little question I wanted to clear up. When you were referring to Exhibit "M," Mr. Beebe asked you one question about the word "kirikae"? A. Yes.

Q. That is the word for which the English word "change" is here used? A. Yes.

Q. Now "kirikae" literally translated means "cut and change," doesn't it?

A. Yes. Well, that means to give, isn't it?

Q. Did you check this translation with Mr. Beebe before we agreed upon it?

A. Yes, I did agree to.

(Testimony of Kaname Fujino.)

Q. Do you agree that the word "change" is the correct connotation? Do you think we have given it the correct connotation?

A. To change or transfer.

Mr. Beebe: What was that you said?

Witness: Change or transfer.

Q. What I am trying to get at, Kaname, is where you get that word "transfer"?

A. Well, you can take it in many meanings. "Kirikae"—well, it [226] just come to my mind, to change or transfer.

Q. But we have agreed on "change." That is the better translation, isn't it? You had first translated it to mean "transfer," didn't you?

A. Yes, I did.

Q. But "change" is a little closer to the exact translation; exact meaning, isn't it?

A. Well, when I first "transfer," I just had in mind "transfer."

Q. That was sort of wishful thinking, huh?

A. Well, I cannot say exactly.

Q. You were not familiar with the business of the Oahu Junk Company when you came here in May, 1941? A. No.

Q. And when Tsuda and Tsutsumi told you to sign the mortgage note for this land, you just went down and signed it? A. Yes.

Mr. Beebe: I object to the question as calling for, or assuming a state of facts not in evidence, if the Court please. I do not recall that he said that Tsuda or Tsutsumi told him to sign that. My recollection is that the bank told him to sign that.

(Testimony of Kaname Fujino.)

The Court: That's right. The other people told him to go and get a deed and record it, so that was a purpose for which he went to the bank, but when he got to the bank he told us [227] that they would not give him a deed until he endorsed the note.

So, will you reframe your question?

The answer was in. It may go out, and the question will be reframed.

Q. You signed this note that has been received here as Plaintiff's Exhibit K, in May, 1941?

A. Yes.

Q. Did you discuss your signing it with Tsuda and Tsutsumi?

A. When I went to the bank they said I have to endorse it, so I endorsed it.

Q. You mean on their say-so; nobody else? You went to the bank, you recall, and asked them for the deed?

A. Yes.

Q. The bank said "Here is a note. You endorse that."

A. They said I have to make note for it, and so I signed it.

Q. Without talking to anybody else about it?

A. Oh, I know Tsuda and Tsutsumi told me.

Q. They told you you would probably have to sign it, before you went to the bank, didn't they?

A. Yes.

Q. (By the Court): Were they with you when you went to the bank?

A. No, I went myself.

(Testimony of Kaname Fujino.)

Q. So before you went to the bank, Tsuda and Tsutsumi said [228] "Well, there is a note down there," in effect, and you would probably have to sign that and endorse it, too? A. Yes.

Q. And following their instructions—it was following their instructions that you did endorse this note; correct? A. Yes.

Q. In fact, you knew so little about the business, the affairs of the business, that you were guided entirely by what Tsuda and Tsutsumi told you that you should do?

A. Yes, I had faith in them. Yes, I trusted them.

Q. They had been your father's attorneys-in-fact for many, many years? A. Yes.

Q. Since he left for Japan in 1935?

A. Yes; I had no doubt about them.

Q. There is one thing that is not quite clear to me, Kaname. I got the impression that you started to work for the Oahu Junk Company soon after you came over, but then you also said you went to school. Did you work and go to school at the same time? A. Yes, I did.

Q. Did you go to day classes?

A. Day classes.

Q. Well, of course when you came in May you didn't start school then? [229]

A. At September.

Q. You worked through the summer?

A. Yes.

(Testimony of Kaname Fujino.)

Q. And when school started in the fall you started school? A. Yes.

Q. And you went to school most of the day, as you could you would help out, in the evenings or on Saturdays or free days?

A. In the afternoon.

Q. In the afternoon? A. Yes.

Q. But you continued on in school until a year and one-half later? A. Yes.

Q. That would be in the fall of 1942, or the spring of 1943; do you remember?

A. Yes, I think it was the spring of 1943.

Q. And all you did was to help out; that is, clerk in the store, or do other little tasks that you could do in your free time? A. Yes, by then.

Q. And Tsuda and Tsutsumi would ask you to do this, or ask you to do that, and you would sort of——

A. And then I began to keep, to run the book-keeping machine, and going through the bookkeeping system, and gradually [230] trying to learn more and more.

Q. And about the time in 1943 that you stopped going to school you had acquired some working knowledge of the business, the books and so on, the accounts, and so on? A. Yes.

Q. But all during that time the entire operation of the business; the decisions that were to be made, and all, were left entirely to Tsuda and Tsutsumi?

A. Yes; they were much more mature than me.

Q. In fact, you weren't ready? A. Yes.

(Testimony of Kaname Fujino.)

Q. To step into your father's shoes, and to run the business, until 1942 or 1943, were you?

A. Yes.

Q. I say: You were not ready to step into your father's shoes? A. Yes, I wasn't ready.

Q. Now do you remember how much of that money that you collected for these rents, approximately how much you paid out to your sisters?

A. Oh, I cannot say how much. I did not itemize them.

Q. Well, was it more than fifteen or twenty dollars? A. Yes.

Q. A considerable amount? A. Yes. [231]

Q. Was there ever any expectation that they were to pay it back, or did you just give that to them?

A. Oh, just give. I didn't expect anything back.

Q. You didn't expect anything back. You just gave that to your sisters? A. Yes.

Q. And would you say that that amounted to hundreds of dollars?

A. Yes; may be one hundred dollars.

Q. Hundreds? More than a hundred?

A. Yes.

Q. Whatever they needed?

A. Yes, if I can help. At that time I could afford it, I just gave it.

Q. And you never expected to get any of it back?

A. No, I did not care to get it back.

(Testimony of Kaname Fujino.)

Q. In fact, would you say you did just what you would expect your father to do, if he were here? He would do the same thing, and you would like to do the same as he would do if he were here?

A. Yes, brothers and sisters, and I did not care to force it and get it back from my sisters. You know—not to outsiders.

Q. Well, you felt you were sort of standing in your father's shoes here, and that as far the family were concerned you had the same position, and you would do the same as [232] he would do if he were here?

A. Yes, because I am the boy; I am supposed to look after my sisters, as the oldest son.

Q. You were expected to do that?

A. Yes, I expected to look after that.

Q. And that was because you were the oldest son, and you were expected to step in to your father's shoes?

A. Yes.

Q. As the head of the family?

A. Yes.

Q. Especially when he was away in Japan?

A. Yes; he was not here.

Q. There is one other question I do not quite understand. When you extirpated yourself you said that you had sent that certificate to Koseki?

A. Yes.

Q. That is, the registration of your family in Japan?

A. Yes.

Q. Now what did you do that for?

A. Well, for to let them know that I was not a citizen any more of that place.

(Testimony of Kaname Fujino.)

Q. Well, did that also throw you out of the family?

A. Yes, according to Japanese custom I am an outsider, a foreigner to them.

Q. In Japan? [233] A. Yes.

Q. Well, didn't you feel that it had thrown you out of the family; as far as you and your father, and sisters, were concerned?

A. Yes, I knew I was out, because I intended to come back to Hawaii and I knew I could not get my father's house and lot over there.

Q. In Japan? A. Yes.

Q. But, as far the property in Hawaii was concerned——

A. Oh, I naturally expecting to get it.

Q. Did you and your father talk about you doing this—extirpation? A. Yes.

Q. He approved of that? A. Yes.

Q. And that was in 1939? A. Yes.

Q. That was before you were twenty-one?

A. Yes, I was 20; just before 20.

Q. Was it because you wanted to remove that idea that there might be dual citizenship that you—you know what dual citizenship is?

A. Yes.

Q. Is that one of the reasons you extirpated yourself [234]

A. Yes; I wanted to come back.

(Testimony of Kaname Fujino.)

Q. You and your father had discussed that?

A. Yes, he did ask me if I wanted to get my Japanese citizen, and or cut my Japanese citizen, and I said, "Oh, yes, I didn't expect to live there permanently with them; I wanted to come back to Hawaii."

Q. You discussed that and thought that would be best?

A. Yes.

Q. So far as the property in Hawaii is concerned it would be advantageous to do it?

A. Oh, not that, but just—that I wanted to come back, and if I stayed there I might get stuck over there.

Q. What do you mean, you might get stuck over there? Did you think war was coming on?

A. No, not that. If I stayed there I might have to go to the Japanese army, and I didn't want to go.

Q. Do you mean in the event of war?

A. Yes.

Q. And you thought at that time that there might be a war?

A. No, not that, but I was about that age, too; about 20, the draft-age, but I didn't want to go.

Q. You did not want to go in the Japanese army?

A. Yes.

Q. You thought at that time there was a possibility of a war? [235]

A. Oh, no, there wasn't any at that time.

Q. You are sure of that?

A. I didn't feel it.

Mr. Jansen: I think that is all.

(Testimony of Kaname Fujino.)

Redirect Examination

By Mr. Beebe:

Q. Kaname, according to law all Japanese—the law of Japan, when a boy becomes of age, what happens to him, so far as the army is concerned?

A. Oh, they get drafted.

Q. And that is true whether there is war or peace or anything else, isn't that true?

A. Yes, even in peace times they would get drafted.

Q. And how long a period of time do they have to spend in the army, during ordinary times, when boys become of age?

A. I don't know; maybe one or two years, maybe.

Q. One or two years. Do you know what effect, if any, that might have on your coming back?

A. Oh, I would lose my American citizenship.

Q. And is that the primary reason or a part of the reason why you gave up your dual citizenship?

A. One of the reasons, because I wanted to come back here.

Q. Now there was a question put to you that if your father had asked for one thousand dollars, whether you would have sent it to him, and you answered that you would. Now would you have sent [236] it to him because you felt that the thousand dollars was his or because you felt that as a dutiful son you should send him money if he needed it?

A. Oh, because he needed it; because I would sent it.

(Testimony of Kaname Fujino.)

Q. Did you have any feeling that any of that rental money belonged to your father?

A. No, I never had such feelings.

Q. Now, Kaname, have you in your files a copy or the original of the deed from your mother to yourself, of the year 1934 or 1935, in which she retained the life estate?

A. It is at the Bishop Bank.

Q. You are sure that you haven't that deed here?

A. No.

Q. Do you think you can borrow it?

Mr. Jansen: I have a photostatic copy of that.

Mr. Beebe: I think I would like to introduce that, so that it may be before your Honor.

The Court: We will take a recess at this time.

(Recess.)

The Court: There seems to be an agreement that there was such a deed reserving the life estate to the mother. Can we not proceed on that, gentlemen, and you can supply a copy of it later if you think it is necessary.

Mr. Beebe: Yes, that is all right.

The Court: It is agreed that there was such a deed, in [237] which the mother transferred her property to the plaintiff, reserving to herself a life estate?

Mr. Jansen: That's right.

Mr. Beebe: As I understand it, she transferred a piece of property to him, reserving a life estate. I understand that there was another piece——

(Testimony of Kaname Fujino.)

Mr. Jansen: Whatever she transferred she reserved a life estate in. I know that.

Q. (By Mr. Beebe): Now, do you know whether or not, after your mother transferred that piece of property to yourself, retaining a life estate in herself, whether she had any other property here?

A. Yes, she had.

Q. And was that retained in her own name?

A. Yes.

Q. Now this piece of property that she retained in her own name, was that rental property or was it unimproved? A. Rental property.

Q. What type of improvements were there on that particular piece of land?

A. A home, used for rental purposes.

Q. Just one house? A. A Duplex home.

Q. And has that been rented out ever since your return to [238] Hawaii? A. Yes.

Q. Now is that piece of property—still dealing with the piece of property that your mother retained in her own name—is that piece of property any of the pieces shown on Government's Exhibit Number 1, 2 and 3?

A. No, it is not in here.

Q. Well——

A. Yes, it is in here. This is——

Q. Wait a minute. Let's not get the record gummed up. Exhibits 1, 2 and 3 show five parcels, the land numbered 1, 2, 3, 4, 5 and 6; that is, parcels of land. Now is the piece of property which your mother retained in her name any one of those six parcels of land shown on those exhibits 1, 2 and 3?

(Testimony of Kaname Fujino.)

A. No.

Q. But it is, as I understand it, in the neighborhood of these parcels shown on Exhibit 1, 2 and 3?

A. Yes.

Q. Now after your return from Japan to Hawaii who collected the rentals on that piece of property, if you know? A. After I returned?

Q. Yes. A. I acted as agent. I collected.

Q. You collected the rentals? A. Yes.

Q. What did you do with the money?

A. I put it aside.

Q. Put it aside where?

A. In her own check account.

Q. In her own checking account. Did she have a checking account here? A. Yes.

Q. Where was that checking account?

A. With the Bishop National Bank.

Q. Now did you continue right up to date collecting the money or collecting the rentals and placing that in her checking account in the Bank of Bishop? A. Yes.

Q. Now was that property ever seized by the Alien Property Custodian? A. Yes, it was.

Q. When? A. In——

Q. Approximately?

A. I think December, 1944.

Q. December of 1944. What happened to the rentals after December, 1944, when the Alien Property Custodian seized the property?

A. Well, the Alien Property Custodian got it.

(Testimony of Kaname Fujino.)

Q. So then say if this is correct: Up to December of 1944 [240] you collected the rental from that particular piece of property and you put it in her bank account? A. Yes.

Q. And then after the Alien Property Custodian seized it he acted as agent and collected the rental, is that correct?

A. Yes. I had nothing to do thereafter.

Q. Now did you draw on your mother's account at all? A. On that? No.

Q. Then I assume that that account was seized by the Alien Property Custodian also?

A. Yes.

Q. Is that right? A. Yes.

Q. Now she had another piece of property, or, rather, she retained a life estate in another piece of property. Will you tell the court; was that property improved or unimproved?

A. Improved.

Q. What kind or type of improvement was there on that property? A. With rental units.

Q. How many rental units?

A. About seven.

Q. And is that property any one of the six pieces of property that are shown on Government's Exhibit 1, 2 or 3? A. No. [241]

Q. Is it in the neighborhood? A. Yes.

Q. And was that property rented at all times subsequent to your return to Hawaii?

A. Yes.

Q. And who collected the rental on that property? A. After I came back, I did.

(Testimony of Kaname Fujino.)

Q. After you returned to Hawaii in May of 1941 you collected the rental, did you? A. Yes.

Q. And appropixmately what was the rental per month that you collected from this second piece of property? A. Oh, about one hundred dollars.

Q. Is this the piece of property that you referred to in your prior testimony as "Camp"?

A. Yes, that is the one.

Q. What is it; different small houses on one piece of land, or two-story or three-story houses?

A. Oh, one-story houses; one-story houses.

Q. And did you say there were seven units?

A. Yes.

Q. And those units rent for approximately how much per month?

A. Oh, fifteen to twenty dollars.

Q. Fifteen to twenty dollars a month? [242]

A. Yes.

Q. And what does the rental include? How about the water, lights and so on and so forth?

A. Oh, I paid the water bill, and repairs.

Q. Light? A. Light, tenants pay.

Q. So your monthly returns from that property were approximately one hundred dollars a month, is that correct? A. Yes, about that much.

Q. And what did you do with that one hundred dollars a month? A. Oh, I threw it in——

Q. After you started to collect it?

A. I put it in my check account.

Q. In your own check account, and not in your mother's checking account? A. No.

(Testimony of Kaname Fujino.)

Q. No. Now, which? Did you put it in your own account? A. In my account.

Q. And it did not come into your mother's accounts as did the moneys from the first piece of property we have been talking about?

A. No.

Q. And that checking account was in what bank?

A. The Bishop National Bank, also. [243]

Q. And, Kaname, when, if you recall, did you start that bank account in the Bishop National Bank? A. Mine started in August of 1941.

Q. August of 1941? A. Yes.

Q. You returned in May of 1941? A. Yes.

Q. The rentals of \$100 per month that you collected on the second piece of property we have been referring to, what did you do with those moneys, between May or June, when you started collecting, and August?

A. Oh, I just had it in an envelope.

Q. An envelope where?

A. Oh, I had it at the store.

Q. Did you have a safe in the store?

A. Yes.

Q. Am I safe in assuming then that you kept it in an envelope in a safe in the store?

A. Yes.

Q. All right. It has come out in the examination that the first check you received as rental from the premises shown in Exhibit 1, 2 and 3, in August, was in the amount of eighteen hundred dollars?

A. Yes.

(Testimony of Kaname Fujino.)

Q. Was that for six months back, or do you know? [244]

A. Oh, I cannot—I do not know.

Q. Was that in cash or in a check?

A. I believe in cash, and I brought it down to the bank.

Q. You believe in cash and you brought it down to the bank? A. Yes.

Q. Now where is your bank book?

A. I have it at the store. The checking account is closed already, though.

Q. Well, can you tell us off-hand, or do you remember what amount your first deposit in the bank was?

A. Several thousands dollars—for it was \$1800 or more; I cannot say exactly how much.

Q. During the noon hour will you go through your things down there and get the bank book and bring it up here? A. All right.

Q. Now you said that Yamamoto took \$850 to your mother at the time he went to Japan, just prior to his death? A. Yes.

Q. How do you know that?

A. Oh, later on I found out. When Yamamoto came, I was in Japan at that time.

Q. Were you there when Yamamoto gave your mother \$850?

A. Well, I didn't know about it.

Q. When did you know about it, and where did you find out? [245]

A. After I came back and looked in the books.

(Testimony of Kaname Fujino.)

Q. You looked in the books, of what?

A. Of the rental collections.

Q. Where were those books kept?

A. Why at the store. It was my books, and I left them there.

Q. While you were in Japan who collected the rental on your mother's property, the store or Yamamoto, or who?

A. I think Mr. Tsuda and Tsutsumi.

Q. You maintain an account there in the store showing these rental collections, is that it?

A. I had a separate book and put it in a separate account.

Q. Did you say "I"?

A. Yes. Well, before I came back somebody else was doing it.

Q. Well, is this correct, then, that in the Oahu Junk Company there was a separate set of books, that separate set of books showing collections of rental on your mother's property, and then an \$850 withdrawal? A. Yes.

Q. By Yamamoto? A. Yes.

A. Is that correct? A. Yes.

Q. And do you remember approximately when that withdrawal [246] was made, according to the books? A. Maybe about March.

Q. March of the year 1941? A. Yes.

Q. What year? A. 1941.

(Testimony of Kaname Fujino.)

Q. Now there has been considerable testimony about this five hundred dollar contribution made to Tsutsumi's brother?

The Court: Tsutsumi's brother who was getting married?

A. Yes.

Q. When did that marriage take place, if you recall? A. It was September of 1941.

Q. Had Tsutsumi been employed by the Oahu Junk Company prior to that time? A. Yes.

Q. Was he employed by the Oahu Junk Company at that time? A. Yes.

Q. Now do you recall whether or not you received a letter—I will withdraw that.

Do you recall to whom the correspondence was addressed about the \$500?

A. I cannot say exact, but maybe it was to the company.

Q. Well, do you remember whether it was letters, or what it was?

A. I think it was a cablegram. [247]

The Court: From?

Q. From whom? A. From my father.

Q. And to the best of your recollection it was to the company, is that right? A. Yes.

Q. During the noon hour will you make an effort to ascertain whether or not that telegram is in your files? A. All right.

Q. And if it is not, see if you can get it, from the telegraph company? A. Yes.

(Testimony of Kaname Fujino.)

Q. All right. Do you have any recollection of whether or not you talked the matter of making this contribution over with Tsutsumi and Tsuda?

A. Yes, I think we read it together.

Q. Well, can you tell the Court whether or not the question was taken up as to whether or not the corporation should or should not make the contribution, or whether you should make the contribution?

A. Well——

Q. Do you understand the question?

A. Beg pardon? I would like to hear it again.

Q. Let's go back. You got the telegram?

A. Yes. [248]

Q. And the telegram was addressed to the Oahu Junk Company?

A. Yes.

Q. As you recall?

A. Yes.

Q. The telegram told you to make the contribution of five hundred dollars?

A. Yes.

Q. Did you talk to Tsuda and Tsutsumi about it?

A. Yes.

Q. Now, did you talk to them about who should make the contribution; whether the corporation or whether you should make it yourself, as a member of the family?

A. Yes, I think we did.

Q. Did you arrive at any conclusion?

A. Yes, because I made out the check.

Q. And you made out the check from your own funds, is that correct?

A. Yes.

Q. Was anything said about whether the corporation could or could not legally make the contribution?

(Testimony of Kaname Fujino.)

A. Well, I would not have known the legal aspects of it.

Q. I didn't ask you that. I said: Was anything said by either Tsutsumi or Tsuda or yourself as to whether or not the corporation could legally make the contribution? [249]

A. I don't know.

Q. You don't know. Is that your answer?

A. Yes.

Q. Well, do you recall whether or not it was talked over between the three of you?

A. Yes, and I made out the check with my funds.

Q. Well, did you make out the check from your own funds because you were told to do so?

A. Yes, we talked it over, and——

Q. You talked it over, and what?

A. And, well, I guess it was decided.

Q. I don't want any guessing. I want to know—if you recall.

A. It was quite sometime back, so I cannot recall too plainly.

Q. All right. And this payment was made when?

A. I think about September of 1941.

Q. That was approximately a month after you had opened your bank account?

A. Yes.

Q. Now had any of the funds, as you recall, that you had collected from your mother's property, gone into that account by the time that you paid this check of \$500?

A. From the life estate property?

Q. Yes. [250]

A. Yes.

(Testimony of Kaname Fujino.)

Q. Now with reference to that deed, I wish you would give us, as best you can, the sequence of events, when you first knew of the deed, and where you learned it, and when you first received it.

The Court: Which deed; the deed to the land by his father, or the mother's?

Mr. Beebe: No, the deed to the land by the father. I think it is Exhibit H. Thank you, your Honor.

The Court: Exhibit H; that's right.

A. The deed from my father to me?

Q. The deed from your father to you?

A. Oh, I first found out that he said he would give it to me before the incorporation, in 1940. That was about October or November.

Q. Of 1940?

A. 1940, yes, and before I came back he was telling me that he give it to me, so—and still go back to Hawaii and study hard and work hard and he said he had given the land to me.

Q. All right. Now what about the power-of-attorney that you gave to Tsutsumi and Tsuda; when did you first learn about that, and the circumstances?

A. Well, about 1940, October or November, about that time, just before the incorporation. [251]

Q. Did you expect to receive a form of power-of-attorney from Hawaii? A. Beg pardon?

Q. Did you expect to receive a form of a power-of-attorney from Hawaii that you were to execute in Japan and send back here? A. Yes.

(Testimony of Kaname Fujino.)

Q. You mentioned you learned that in October or November, is that correct?

A. I remember when my father gave it to me and told me to go to the American Consulate.

Q. Well, now, had you known about it prior to the time that your father gave it to you?

A. Yes, when he told me he was make me sign the notes. It was at that time.

Q. Well, then, in December it was received?

A. Yes.

Q. Is that correct? A. Yes.

Q. And your father told you to take it to the American Consulate? A. Yes.

Q. Is that correct. And you did take it to the American Consulate? A. Yes. [252]

Q. Who sent it back here, your father or yourself or whom? A. I believe my father.

Q. You believe your father.

The Court: Now there are so many powers-of-attorney in here. The one you have been talking about is which one?

Mr. Beebe: The power-of-attorney that I am referring to is the power-of-attorney from Kaname Fujino to Tsuda and Tsutsumi, which is Plaintiff's Exhibit I.

Mr. Jansen: I understood that is what you were speaking of; Kaname's power.

The Court: I am confused. Was there more than one by this plaintiff to those people?

Mr. Beebe: No, the other ones were by the parents.

(Testimony of Kaname Fujino.)

The Court: He said he saw this before he signed the notes. As I understand it, he did not sign the note at all; it was pursuant to the power-of-attorney that the note was signed?

Mr. Beebe: That's right.

The Court: Now does he mean signed the note at the bank?

Mr. Jansen: That's right. The power was given, he testified, as I understand it, to enable his attorneys-in-fact to sign the note, and that was the purpose of it.

The Court: He said he saw them before he signed the note. Does he mean before he endorsed the note at the bank?

Mr. Beebe: I don't get that.

The Court: It may not be crucial, but I was wondering if [253] there was another power-of-attorney here.

Mr. Beebe: I didn't get his testimony in that respect.

The Court: You are asking him when he first knew about this power-of-attorney, this form that was coming to Hawaii?

Mr. Beebe: Yes, that's right.

The Court: And he said he knew about it before he signed it—before he signed the notes.

Mr. Beebe: I would like to clear it up.

(Testimony referred to was read by the reporter to the Court.)

The Court: Oh, I misunderstood that.

(Testimony of Kaname Fujino.)

Q. (By Mr. Beebe): Now, the notes that you refer to, is that a note of twenty thousand dollars?

A. Yes.

Q. And was that note signed by you individually?

A. I knew my attorneys-in-fact signed it for me.

Q. You can go through the desk and bring certain correspondence, or bring all the correspondence?

A. Yes.

Q. And just to clear up the record, were you requested by me at any time to go through the desk and files down there to locate correspondence?

A. Beg pardon.

Q. Were you requested by me over the past several months to locate or try to locate correspondence having to do with this [254] case?

A. Yes.

Q. And was it limited in that respect? That is, try to find correspondence dealing with this case?

A. Yes, I tried to find.

Q. And the only correspondence that you can find are the letters that have been introduced here?

A. Yes.

Q. That is, dealing with the property; these two letters are the only ones that you could find, is that correct?

A. Yes.

Mr. Beebe: I think that is all for the time being, if the Court please.

Mr. Jansen: Well, with regard to this correspondence, Mr. Beebe, I got the impression that there were only a few letters; that is, whatever

(Testimony of Kaname Fujino.)

could be found in the desk would not amount to great reams of correspondence, and they were found in Yamamoto's desk, and I wanted him to produce whatever he found in the desk. Do you understand that?

Mr. Beebe: I see.

Witness: Yes, I could.

Mr. Jansen: Are there many?

Witness: No, not too many.

Mr. Jansen: Perhaps a couple of dozen?

Witness: Yes. [255]

Mr. Jansen: Would you bring them down early, so that we can look them over?

Witness: Yes.

The Court: Perhaps we would do well to take our noon recess now, and it might facilitate these letters being examined.

To what time would you like to reconvene, in view of these letters, 1:30 or 2?

Mr. Beebe: 1:30, your Honor.

Mr. Jansen: Yes.

Mr. Beebe: That is one of the reasons for doing this; we want to clear up the record. I told him to go down and find any correspondence that he could get, and relative to land, or this particular case. I just asked for the general correspondence.

The Court: All right. We will recess at this time until 1:30 p.m.

(Whereupon a recess was taken until 1:30 o'clock p.m., November 6, 1946.)

Afternoon Session

November 6, 1946, 1:30 P.M.

The Court: Are are parties ready?

Mr. Beebe: Ready for the plaintiff, if the Court please.

Mr. Jansen: We are ready.

The Court: Very well, you may proceed.

KANAME FUJINO

the plaintiff herein, resumed the stand for further examination, and testified as follows:

Redirect Examination
(Continued)

By Mr. Beebe:

Q. Kaname, during the noon hour did you locate the bank book that I asked you to endeavor to locate? A. Yes, Mr. Beebe.

Q. And have you a haole name?

A. Yes, I do.

Q. What is that haole name? A. Ricke.

Q. Ricke? A. Yes.

Q. Was this bank account in the Bishop National Bank of Hawaii opened in the name Ricke Fujino? A. Yes.

Q. (By the Court): Where did you ever get that name of "Ricke"? [257]

A. It is not my legal name.

(Testimony of Kaname Fujino.)

Q. (By the Court): What is your name?

A. I was born "Kaname Fujino."

Q. (By Mr. Beebe): Is the name you adopted the same as a great many boys of Japanese ancestry do; taking the name of Harry, Richard, or something of that kind? A. Yes.

Q. It never was validated by the government?

A. No.

Q. Now I wish you would examine this bank book and see if you can refresh your recollection as to whether the funds, other than the \$1800, that was received as rentals from the Oahu Junk Company, were used in making the first deposit?

A. Yes.

Q. The first deposit is how much?

A. \$2,484.97.

Q. And the second deposit is how much?

A. Nine hundred dollars.

Q. Do you recall what that \$900. was for, or from whom you obtained it?

A. Yes, I received it either from Mr. Tsutsumi or Mr. Tsuda.

Q. What did it represent? A. Rental.

Q. On the property that you had rented to them under verbal [258] lease, of \$300. a month?

A. Yes.

Q. Then the different in the first deposit, between eighteen hundred dollars and twenty-six hundred dollars, which you deposited, where were those funds?

(Testimony of Kaname Fujino.)

A. Oh, that I don't know. You ask my attorneys-in-fact.

Q. Did any of it represent collections made by you from what you have termed the Camp premises?

A. Yes, I believe so.

Q. And there are other odd amounts in there deposited from time to time or from period to period. Were some of those rentals from the Oahu Junk Company and other rentals that you had collected from your mother's property?

A. Yes; they were all put in one.

Q. The property that I am referring to is the property that she obtained a life estate in?

A. Yes.

The Court: Once again, that first figure was what?

Mr. Beebe: That was 2,484.

I think that is all.

The Court: Didn't you ask for a cablegram, too?

Mr. Beebe: Oh, yes. Did you locate them?

Witness: Yes.

The Court: I may be mistaken. You may have been the one who asked for it, Mr. Jansen. [259]

Mr. Jansen: No.

Mr. Beebe: I asked for it, if the Court please.

The Court: You don't have to cover it now. I was just trying to refresh your recollection. If you have any plan, it is all right.

(Testimony of Kaname Fujino.)

Recross-Examination

By Mr. Jansen:

Q. Until you started this checking account on August 22, 1941, you had no checking account, did you? A. No.

Q. And it was on the occasion of your receiving the first large check for rent, of \$1800., that you started this checking account? A. Yes.

Q. And who advised you to start the checking account? A. My attorneys-in-fact.

Q. Your attorneys-in-fact advised you to start the checking account, and it was following their advice that you did start the checking account?

A. Yes.

Q. So on August 22, 1941, you deposited the \$1800., and \$684.97 that you had on hand from other rentals and things? A. Yes.

Q. And you put that all in your checking account? A. Yes. [260]

Q. Then on September 22nd, a month later, you got an additional \$900. rent from the Oahu Junk Company that you deposited? A. Yes.

Q. Now you have explained that out of this checking account you paid, in accordance with instructions from your father—you paid five hundred dollars to Tsutsumi for a wedding present?

A. Yes.

Q. And I think Mr. Beebe asked you whether or not you had a cable about that? A. Yes.

(Testimony of Kaname Fujino.)

Q. And that was in August or September, 1941, to your best recollection?

A. Yes, it must be about that time.

Q. Perhaps a short while after you put this money in the bank?

A. (Witness looks at folder.)

Q. While you are looking that up, I will ask you another question.

Now, calling your attention again to Plaintiff's Exhibit N and N-1, this gift tax return and the check, did you sign the gift tax return, or was that signed by the attorneys-in-fact?

A. I don't know. It must be the attorneys-in-fact.

Q. You do not recall signing it? [261]

A. No.

Q. And the check is signed Yotaro Fujino by the attorneys-in-fact, is that right? A. Yes.

Q. That is a check on the Bishop National Bank of Hawaii? A. Yes.

Q. Your father had a separate bank account in the Bishop National Bank of Hawaii?

A. Yes.

Q. Do you know where the money came from that went into that bank account?

A. Oh, when I came back it was there already.
Mr. Beebe: I didn't hear that.

A. When I came back it was there already; that check account was there already.

The Court: The father's?

(Testimony of Kaname Fujino.)

A. My father's, and he had some Honolulu stock; brewery stock, and dividends come in.

Q. Yes, but they were not that much money though, \$700., were they?

A. No, they were small amounts.

Q. They were small amounts. Did you put money in your father's bank account from time to time?

A. Yes; just those stock dividends, when they came in, I deposited. [262]

Q. Did you put anything from your checking account into your father's?

A. No, not from my side; I never did.

Q. Let's see; you started this checking account of yours on August 22, 1941? A. Yes.

Q. You know of your own knowledge, don't you, that on July 25th or 26th, 1941, your father's checking account was frozen, wasn't it?

A. Yes, I recall that there was a freeze order, yes.

The Court: What was the date, again?

Mr. Jansen: July 26th, 1941.

Q. And you and the attorneys-in-fact talked about the freezing order, didn't you?

A. Yes.

Q. And you knew that both your father's account and your mother's account were frozen, because they were both living in Japan? A. Yes.

Q. And that is the reason you started your own checking account, isn't it?

A. Well, I cannot recall exactly why.

(Testimony of Kaname Fujino.)

Q. One of the reasons you started your own checking account was because your father's and mother's account had been frozen, wasn't it—one of the reasons? [263]

A. I had it in an envelope before that. It is better to put it in the bank, so I put it in.

Q. From July 25th or 26th, 1941, until August 22nd, you kept it in an envelope at home?

A. At my place of business.

Q. And when you got the \$1800. and with the money that you had in an envelope, because your father's account had been frozen, you started your own account, didn't you?

A. I didn't have that in mind. I cannot say because of that.

Q. That was one of the reasons, wasn't it?

A. I cannot say that.

Q. You and the attorneys-in-fact talked about that freezing, didn't you?

A. Oh, yes.

Q. And it would not have done any good to put the money into your father's account because then it would have been frozen, wouldn't it?

A. Oh, I didn't have such ideas as that.

Q. Didn't the attorneys-in-fact tell you. They told you to start a checking account, didn't they?

A. Oh, yes.

Q. They advised you about that, and told you that was the thing to do?

A. Yes. [264]

Q. And instructed you to do it, is that right?

A. Yes.

(Testimony of Kaname Fujino.)

Q. And you know of your own knowledge that one of the reasons that they told you or instructed you to do that was because your father's account was frozen?

A. I cannot say it was because of that.

Q. That was one of the reasons, wasn't it?

A. It could be.

Mr. Beebe: I think the question has already been answered, if your Honor please.

Q. You said it could be? A. Maybe.

Q. Maybe. Wouldn't you say "yes?"

A. As I say, I cannot recall having thought of that. I told you I could not tell you that I thought that was the reason I put it in.

The Court: If the father's account was frozen, how could it have been used in March, 1942?

Mr. Jansen: The government will always allow a license for the payment of taxes, and that was probably withdrawn for the purpose of paying taxes.

The Court: All right.

Q. Why didn't you collect rent before August 22, 1941?

A. Well, the Camp money used to come in. You mean the Oahu Junk? [265]

Q. Yes.

A. I don't know why I didn't demand, but I was busy with my own schooling, and going to school, and as I told you I was not taking an active part in the business at that time, so I had no intentions of demanding the money.

(Testimony of Kaname Fujino.)

Q. You had no intention of demanding the money at all during all the time that you were going to school, did you? A. That's right.

Q. That's right? A. Yes.

Q. And it was only at the suggestion of the attorneys-in-fact that you did finally say "Well, o.k., pay me rent." That's right, isn't it? A. Yes.

Q. The answer is "yes?" A. Yes.

Q. And you had intended to go to school for four years? A. Yes.

Mr. Jansen: I think I might offer this in evidence.

Mr. Beebe: I have no objection to it going into evidence.

The Court: It may become the government's exhibit next in order. Is that an active book? Would you be needing this book?

Witness: No.

The Court: It will be Exhibit Number 6. [266]

(Document offered in evidence and is received and marked: "Defendant's Exhibit No. 6.)

Q. Now, Kaname, I want you to try to remember, if you can, about how much your balance was in the bank on or around March, 1942; just in round figures.

A. I won't know. I would have to go down to the bank and get a bank statement. That is the only way I can say.

(Testimony of Kaname Fujino.)

Q. You haven't paid out very much in there, except that \$500. to Tsutsumi?

A. Yes. I believe around \$2,400.

Q. Around two thousand dollars? A. Yes.

Q. Now when Mr. Beebe was examining you awhile ago, just before lunch, he asked you about this thousand dollars that I had spoken about, that you had paid to your father, and he said, if I remember correctly, you would not give the thousand dollars because you owed it, you would give it to him because he needed it; is that what I am to understand you meant? A. Yes.

Q. Well, as a matter of fact, you did not know when you came back from Japan in May whether you would ever have the thousand dollars as a result of owning this land, did you? A. No.

Q. You didn't know what kind of an income there would be from it, if anything, is that right?

A. Oh, maybe I was thinking what rental income I might [267] have.

Q. But you didn't intend to collect any until after school; when school was out; until after you were through school? A. Beg pardon?

Q. You didn't intend to collect any rent until after you were through with school?

A. You mean after four years?

Q. Yes.

A. No, I did not. I cannot——

Q. Do you understand my question?

A. You say after four years. No, I did not think in that way.

(Testimony of Kaname Fujino.)

Q. You did not think of it in that way?

A. No.

Q. You were not really interested in collecting rent on this land, were you?

A. I would not say that.

Q. Well, Mr. Beebe asked you if you would give your father a thousand dollars. You actually used this land to raise eight thousand dollars for your father, didn't you? A. Yes.

Q. To pay off his income taxes?

A. Yes, I did.

Q. And that was in early 1942?

A. Yes. [268]

Q. Your father had an income tax liability of around eleven thousand dollars? A. Yes.

Q. And you asked the Oahu Junk Company to give you eight thousand dollars? A. Yes.

Q. And the Oahu Junk Company advanced him, your father, three thousand, and between the two of you you paid the eleven thousand dollar tax liability? A. Yes.

Q. And then you said to the Oahu Junk Company: "Well, you can just charge that off to rent, from month to month," is that right?

A. That's right.

Q. So you used this rent to pay off this \$11,000; that is, \$8,000 of it? A. Yes.

Q. Has your father asked you to do that?

A. Well, that time the war was on, so he didn't actually ask me.

(Testimony of Kaname Fujino.)

Q. Had he spoken of it before?

A. About the tax? No.

Q. Did you tell your father that he owed this \$11,000 in taxes; income taxes?

A. I had no way of telling him; the war was on.

Q. But you felt a responsibility to pay it off?

A. I have, yes; that is my father.

Q. And you used the land for that purpose?

A. Not—I signed a note to the Oahu Junk Company, yes.

Q. To the Oahu Junk Company? A. Yes.

Q. And you allowed them to use that, to take it and deduct it in rent? A. Yes.

Q. So you used the land as security with the Oahu Junk Company to raise that \$8,000?

A. Yes.

Q. Now at whose suggestion was that, the attorneys-in-fact? A. Oh, yes.

Q. They suggested that was the best way to handle it? A. Yes.

Q. They said to you: "Your father has this tax liability for \$11,000 and you will have to do something about paying it off?" A. Yes.

Q. In order to keep the books straight, the Oahu Junk Company will loan \$8,000 to you?

A. Yes.

Q. You give the Oahu Junk Company back a note for \$8,000? A. That's right.

Q. And then the Oahu Junk Company can deduct it from the [270] rent; \$300 a month?

A. Yes.

(Testimony of Kaname Fujino.)

The Court: I am a little confused. I understand he borrowed \$8,000, using land as security for some sort—and that the corporation advanced another \$3,000 and that the total liability was \$11,000?

Q. (By Mr. Jansen): That's right. The land was security to the extent that you used the anticipated rents. You expected to receive \$300 a month?

A. That's right.

Q. In the future, from Oahu Junk?

A. Yes.

Q. You said "I will borrow \$8,000 against that \$300 a month?"

A. Yes.

The Court: From the corporation?

Q. From the corporation, is that right?

A. Yes.

Q. That was all from the suggestion of these attorneys-in-fact?

A. Yes, that's right.

Q. That idea did not originate with you at all?

A. No.

Q. There was a separate item of \$3,000 with the Oahu Junk Company paid to make up the \$11,000. So, actually, all the [271] \$11,000 came out of the treasury of the Oahu Junk. That's right, isn't it?

A. Yes.

Q. Now, Kaname, the power-of-attorney that you signed in Japan runs to Tsuda and Tsutsumi?

The Court: Exhibit "I"?

Mr. Jansen: Exhibit "I," yes.

A. Yes.

Q. That was signed by you in December, 1940?

A. Yes.

(Testimony of Kaname Fujino.)

Q. Have you ever revoked the power—this power-of-attorney? A. No.

Q. The power-of-attorney is still in full force and effect? Is that right? A. Yes.

Q. Now, this cablegram, dated September 22, 1941, is that a cablegram from your company?

A. Yes.

Q. Addressed to the Oahu Junk Company?

A. Yes.

Q. And can you tell us what it says, in English?

A. It says he returned to Japan safely, and to let Kaname know; that is me.

Mr. Beebe: Say it louder if you can, please.

A. I will start all over again. "Returned safely home. Let Kaname know about it. Please give to Tsuneto,"—that is, Mr. Tsutsumi,—There is another Tsutsumi, but that is the one—(int.).

Q. Just give me what is there.

A. "Please give to Tsuneto \$500 as a wedding present. Fujino." Signed "Fujino."

The Court: That is to the Oahu Junk Company, Incorporated?

Witness: Yes.

Q. Now does that say "Tell Kaname to give \$500 as a wedding present," or does it say "Tell Kaname I am home. You give \$500 as a wedding present?"

A. Oh, "Let Kaname know that he returned safely."

Mr. Jansen: Surely.

Witness (Indicating on Document): I believe the sentence would end here.

Q. You mean, "Let Kaname know that I am back in Japan?" A. Yes.

Q. And then the instruction would run to the Oahu Junk Company?

A. Yes, "Give \$500 to Tsumeto." That is the way it reads.

Q. And you carried out the instructing by paying the \$500 out of the money you had in the bank?

A. Yes.

Mr. Jansen: No further recross-examination.

The Court: Re-redirect?

Mr. Beebe: Yes.

(Testimony of Kaname Fujino.)

Q. Well, that still does not answer my question. Is it to the Oahu Junk Company to let you know to pay the \$500, or is that a separate——(int.).

A. It is in between; you can take it either way.

Q. You can take it either way?

A. "Let Kaname know that I returned safely," and then "give to Tsumeto \$500 as a wedding present."

Q. Well, is the constructions, Kaname to give to Tsumeto \$500 as a wedding present?

A. Yes.

Q. Yes, that's right.

Mr. Jansen: I think I will reserve offering the cable itself. [273]

Witness: Can I take a look at it again, Mr. Jansen?

(Testimony of Kaname Fujino.)

Re-redirect Examination

By Mr. Beebe:

Q. Kaname, you have mentioned the fact that \$8,000 was borrowed by you on a note?

A. Yes.

Q. Was there any mortgage given on the land, to the Oahu Junk Company? A. No.

Q. And what was done with that \$8,000, if you know? [274]

A. I paid to my father on my shares.

Q. Wait a minute. What was done with the eight thousand dollars that you mentioned; did you keep it in your pocket, or put it in the bank, or what did you do with it?

A. I must have paid it to my father.

Q. Directing your attention to a bankbook here, on the Bishop National Bank of Hawaii, Yotaro Fujino, the account starting in October, 1941, apparently on the 1st day of October, I will ask you to examine that bankbook and look over the various items there, and then see if it refreshes your recollection as to what was done with the eight thousand dollars?

A. Oh, it was paid to Yotaro Fujino and put in his check account.

Q. In the bank? A. Yes.

Q. Along with some \$3800 more, to make up a deposit of \$11,841.53? A. Yes.

(Testimony of Kaname Fujino.)

Q. So eight thousand dollars of that was what you borrowed from the Oahu Junk Company upon your own, is that correct? A. Yes.

Q. And \$3,841.53 was what the Oahu Junk Company advanced without a note from you, is that correct?

A. They did not advance the rest of that three thousand. [275] I mean I just gave them the eight thousand.

Q. You borrowed the eight thousand dollars?

A. From the Oahu Junk, yes.

Q. On your own, from the Oahu Junk Company?

A. Yes.

Q. And, as I recall, Mr. Jansen said something about \$3800 being advanced by the Oahu Junk Company. Do you know anything about that?

A. No.

Q. And, as I recall—now, prior to your borrowing that eight thousand dollars and depositing it in your father's account for the payment of that obligation, do you know whether any application had been made for "foreign funds," for the purpose of meeting this tax obligation?

A. Yes, I recall hearing something about it, yes.

Q. Do you know what was done; what efforts were made through "foreign funds" to raise the funds necessary to meet this tax obligation?

A. Yes, I recall Tsuda and Tsutsumi working on a license to raise the money. I did not actually go into the details of it.

(Testimony of Kaname Fujino.)

Q. So actually, though, you do not of your own knowledge know what efforts were made prior to your raising this eight thousand dollars, is that correct? A. Yes. [276]

Q. That's right? A. Yes.

Mr. Beebe: At this time, if your Honor please, I would like to offer in evidence this telegram of September 22nd, addressed to Oahu Junk Company, Honolulu, and signed "Fujino."

Mr. Jansen: No objection.

The Court: It may be received as Plaintiff's Exhibit next in order,—Exhibit "O."

(Paper offered in evidence is received and marked: "Plaintiff's Exhibit O.")

[Plaintiff's Exhibit O set out on page 525.]

Q. Do you know whether or not your company had an account in any bank prior to the freeze date?

A. Yes, I think.

Q. In 1941? A. Yes, I think they had.

Q. Now, turning to your Exhibit "O," did I understand you to say that your translation was that after the word "Sirase" that there was a new sentence? A. Yes.

Q. Then your translation is: "Returned safely home. Let Kaname know about it?" A. Yes.

Q. And then a new sentence starts. How does that new sentence start?

A. "Please give five hundred dollars as wedding present to Tsuneto."

(Testimony of Kaname Fujino.)

Q. Is the word "please" there? [277]

A. "Owatasikou," yes.

Q. "Owatasikou" is "please"? A. Yes.

Q. It says "Please give"? A. Yes.

Q. Now when did you agree as to the rental that the Oahu Junk Company was to pay for that property? I am directing my attention to the amount, and to the time you returned here in May of 1941.

A. I would not know. The attorneys-in-fact decided that.

Q. Didn't you have anything to do or say about it? A. Well, I trusted them.

Q. Did you ever talk to them about rental?

A. Yes. I cannot recall rent, but they told me the monthly rental is \$300.

Q. Approximately when was it that they told you that the monthly rental was \$300?

A. I cannot recall. Maybe it was in May, or maybe at the time they gave me the lump sum.

Q. Now did you have any right, or power-of-attorney from either your father or mother to draw on any bank account that they might have had here in the Territory of Hawaii? A. To me?

Q. You? A. No. [278]

Q. You had no power-of-attorney from either your father or mother? A. No.

Q. Had they signed any slip in any bank, so far as you know, authorizing you to draw on any bank account that they may have had here?

A. No.

Mr. Beebe: I think that is all.

(Testimony of Kaname Fujino.)

The Court: Just one point. It may appear to be a little absurd, but we have so many powers-of-attorney floating around here. When he said "attorneys-in-fact decided what the rent should be," does he mean these men acting as his father's attorneys-in-fact or acting as his attorneys-in-fact, or both?

Mr. Beebe: Q. Will you answer that question?

The Court: Do you understand the question?

A. Yes. Well, I cannot say. They just told me the rental is \$300. I just took it as is.

Re-recross-Examination

By Mr. Jansen:

Q. This bank account that Mr. Beebe called attention to, in the Bishop National Bank, do you know of your own knowledge whether the account was actually started in October, 1941, or was it older than that, and it just happened to be in a new book? [279]

The Court: Exhibit 6?

Mr. Jansen: It has no exhibit number.

Q. This Yotaro Fujino bank book.

A. I don't know when it started.

Q. That was an old account in the Bishop Bank, wasn't it? It had been running for years, hadn't it?

A. I cannot recall. I don't know.

Q. Did you make a deposit of \$11,841.53 in June, 1942,—you personally?

A. No, I don't recall.

(Testimony of Kaname Fujino.)

Q. Did you make out a check for \$8,000. from your account in June, 1942? Or, did you just endorse the \$8,000. check over, and then the attorneys-in-fact took it to the bank and put it in your father's account? That must be what you did.

A. I think it is like that.

Q. You looked in your bank book. You put in a deposit for that amount? A. Yes.

Q. You must have just turned the check back to them when you got it? A. Yes.

Q. They took the eight thousand and three thousand down to the Bishop Bank and put it in your father's account, is that right? A. Yes. [280]

Q. Now if I understand you correctly, during all of this time Tsuda and Tsutsumi were your father's attorneys-in-fact? A. Yes.

Q. And are you familiar with the powers-of-attorney that have been offered here in evidence? You have looked at them and read them?

A. Yes, I did read them.

Q. Did you have commercial law here in Hawaii when you went to school? A. No.

Q. Or, do you know——

A. No, I don't know the legal aspects about this.

Q. Do you know that the power-of-attorney that your father gave to Tsuda and Tsutsumi gave them authority to transact all of his business, whether it had to do with lands, or money, or anything else? I mean, you are aware of that? A. Yes.

Q. You are aware, too, that your mother's power-of-attorney was also to Tsuda and Tsutsumi?

A. Yes.

(Testimony of Kaname Fujino.)

Q. And gave them complete authority?

A. Yes.

Q. And your power-of-attorney, which is still in existence, was to Tsuda and Tsutsumi and gave them complete authority? A. Yes. [281]

Q. Even to deed away the land that your father had deeded to you? You knew that? A. Yes.

Q. Yes.

Mr. Jansen: That is all.

The Court: Are you through with the witness now?

Mr. Beebe: Yes, your Honor.

(Witness excused.)

TOKUICHI TSUDA

called as a witness for the plaintiff herein, and being first duly sworn, testified as follows:

Questions by the Court

Q. Will you please state your full name?

A. Tokuichi Tsuda.

Q. And at all times will you talk loud enough so the attorneys can hear you? A. Yes.

Q. How old are you? A. Forty-six.

Q. Where do you live?

A. 903 11th Avenue.

Q. Honolulu? A. Honolulu.

Q. What is your occupation?

A. Manager. [282]

Q. Of what? A. Oahu Junk Company.

(Testimony of Tokuichi Tsuda.)

Q. Are you a citizen of the United States?

A. Yes, I am.

Q. Exclusively? Only? A. Yes.

Q. You are not a dual citizen?

A. I am a dual citizen.

Q. You are a dual citizen, the other country being Japan? A. Yes.

The Court: You may proceed.

Direct Examination

By Mr. Beebe:

Q. Where were you born?

A. I was born in Kona, Hawaii.

Q. Have you lived in the Hawaiian Islands all your life? A. Yes, I have.

Q. How long have you lived in Honolulu?

A. I have lived in Honolulu since I was about fourteen years of age.

Q. And you are now 46,—is that what you have told the Court? A. Yes.

Q. Do you know Kaname Fujino?

A. Yes, I do. [283]

Q. How long have you known him?

A. Oh, about 25 years.

Q. And do you know where he was born?

A. Yes, I do.

Q. Where?

A. Right alongside of the property of the Oahu Junk Company.

Q. Are you employed by the Oahu Junk Company? A. Yes, I am.

(Testimony of Tokuichi Tsuda.)

Q. How long have you been employed by the Oahu Junk Company? A. Since about 1921.

Q. I take it then that you know Yotaro Fujino, the father? A. Yes, I do.

Q. Had you known him prior to the time you went to work for the Oahu Junk Company, or did you become acquainted with him just when you went to work there?

A. Just when I went to work there.

Q. And did you know Chiyono, Kaname's mother? A. Yes.

Q. Now when you first went to work for the Oahu Junk Company can you tell us what sort of an entity it was; whether it was individually owned; whether a partnership-owned, or whether it was a corporation?

A. It was owned by Mr. Fujino and another party by the name [284] of Mr. Honda, doing business under the name of Oahu Junk Company.

Q. When you say Mr. Fujino, I wish you would say whether it is Mr. Kaname Fujino or Mr. Yotaro Fujino? A. Yotaro Fujino.

Q. Was it originally started as a partnership of Yotaro Fujino and someone else,—is that right?

A. Yes.

Q. And was there a change later from the co-partnership?

A. Yes, the other person, he withdrew from the partnership.

Q. Approximately when was that?

A. Oh, about two years after I worked there.

(Testimony of Tokuchi Tsuda.)

Q. When,—what year, did you start to work there? A. 1921.

Q. So it was about '23? A. About 1923.

Q. When the other partner withdrew?

A. Yes.

Q. And from then on was it continued by Yotaro Fujino, doing business as Oahu Junk Company?

A. Yes.

Q. Now was there a change after that time in the set-up?

A. Yes; he incorporated the business in November, 1940.

Q. And where was Mr. Fujino at that time,—Yotaro Fujino? [285] A. He was in Japan.

Q. And where was Chiyono Fujino at that time?

A. She was also in Japan.

Q. When, if you know, did Yotaro Fujino and Chiyono go to Japan?

A. They left the Territory in February, 1935.

Q. Did either one of them ever return after that time? A. Yes, Mr. Fujino did.

Q. Approximately when did he return, Mr. Tsuda?

A. He returned sometime in September of the same year,—1935.

Q. And remained how long, if you know?

A. Oh, about a month.

Q. Then with the exception of that one visit of Yotaro Fujino had he been in the Territory at all since 1935, when he left here?

A. No, he had not.

(Testimony of Tokuichi Tsuda.)

Q. Would that same be true of Chiyono Fujino?

A. Yes.

Q. She never did come back to the Territory, is that correct?

A. She never did.

Q. How about Kaname; did he leave the Territory at any time?

A. Yes, I think he left when he was,—Childhood. [286]

Q. Did he later leave, in 1934 or 1935?

A. Yes, he left in 1934.

Q. When did he return to the Territory?

A. In May, 1941.

Q. Now who was in charge of the business, the Oahu Junk Company, from the time Yotaro left the Territory up to the time, we will say, Kaname returned, in 1941?

A. Tsutsumi and myself.

Q. Did you ever, or were you acting under any powers-of-attorney given you by either Yotaro Fujino or Chiyono Fujino during that period of time?

A. Yes.

Q. When were these powers-of-attorney given you, if you recall?

A. The first power-of-attorney was given us in February, 1935.

Q. By both of the Fujinos; that is, Yotaro Fujino and Chiyono Fujino?

A. Yes.

Q. Directing your attention to three powers-of-attorney already in evidence, being Exhibits A, B, and C, are those the powers-of-attorney under which you acted during that period of time.

A. Yes.

(Testimony of Tokuichi Tsuda.)

Q. And you are the Tokuichi Tsuda referred to in all three [287] of those powers-of-attorney, are you? A. Yes.

Q. Now I notice one of these powers runs from "Yootaro" Fujino, and another one runs from "Yotaro" Fujino. Can you enlighten us upon that difference in the spelling in the first name?

Is there any reason you know of that there was a difference in the spelling of the first name on the two powers? That is, where one of them is spelled "Y-o-o-t-a-r-o" and the other one is spelled "Y-o-t-a-r-o"?

A. He had one of the property under the title of "Y-o-t-a-r-o" Fujino, with the "Yotaro" spelled with one "o" and on the other property with the "Yotaro" spelled with two "o's", so he wanted them to run both ways, because of the difference.

Q. So he wanted them to run both ways because of the difference there in the spelling of the name in the deeds to the various properties, is that correct? A. That's right.

Q. Now at the time of the incorporation of the Oahu Junk Company, in December of 1940,—Was it December or November, 1940?

A. November, 1940.

Q. Who, if an attorney did act, acted as attorney in the drafting of the papers, and so forth? [288]

A. Mr. Robert Murakami.

Q. He has been on the witness-stand here?

A. Yes.

Q. And do you know, or did you know, a person by the name of Seitaro Yamamoto? A. Yes.

(Testimony of Tokuichi Tsuda.)

Q. Who was Seitaro Yamamoto?

A. Seitaro Yamamoto has been advisor and secretary to Yotaro Fujino.

Q. Was that prior to the time the Fujino's, Yotaro and Chiyono, went to Japan? A. Yes.

Q. Was he an employee of the Oahu Junk Company in 1935 and prior thereto? A. Yes.

Q. And subsequent to the time that the Fujinos went to Japan, what status, if any, did Seitaro Yamamoto occupy with the Oahu Junk Company, after the old gentleman and the mother went to Japan?

A. He was in an advisory capacity.

Q. Did he work down at the Oahu Junk Company after 1935, when the old folks went away?

A. Yes, he did.

Q. And he was paid a salary? A. Yes.

Q. And how long did he continue in the capacity that you [289] have mentioned?

A. Until his death in 1941, August.

Q. Did he have a desk down there, and so forth?

A. Yes, he had a little table.

Q. And was there any correspondence that was carried on between the Oahu Junk Company and the Fujinos in Japan after 1935, when the old man finally went away for good?

A. Yes, there was.

Q. Who acted as correspondent for the Oahu Junk Company? A. He did.

Q. That is, who answered the letters, if any were received, from the Fujinos, Yotaro and Chiyono?

A. Seitaro Yamamoto did all the answering, the writing.

(Testimony of Tokuchi Tsuda.)

Q. Were letters received from the old man in Japan from time to time, about business and so forth? A. That's right.

Q. Now why was it that Seitaro Yamamoto carried on the correspondence, at least so far as the Junk Company was concerned?

A. Because I would not know how to read or write. Of course I would not say that I did not know nothing at all, but I would not know to the extent to understand what was contained in a letter that was received, or I would not be able to answer the letter.

Q. Does that mean that you do not write Japanese well [290] enough to express yourself and the information that you wanted on the business carried back to the old gentleman in Japan?

A. That 's right.

Q. Was Yamamoto foreign-born? A. Yes.

Q. Born in Japan? A. Yes.

Q. And how about his English? Could he read and write English?

A. Well, he spoke pretty good.

Q. Could he write in English?

A. Yes, he did.

Q. Did he write Japanese well and fluently?

A. Yes, he did.

Q. And was that the reason that the correspondence was turned over to him as secretary?

A. That's right.

(Testimony of Tokuichi Tsuda.)

Q. Now how about the other person named as attorney-in-fact, Tsutsumi. Did he have any facility in writing Japanese?

A. I don't know. I guess he was just as bad as I was.

Q. How long, if you know, did Seitaro Yamamoto work for the Oahu Junk Company?

A. Sometime about 1925.

Q. I see. Then he went to work for the old gentleman after you started work, is that right? [291]

A. Yes.

Q. Had he been in the junk business prior to the time that he went to work for Yotaro Fujino in the Oahu Junk Company?

A. Yes, he was connected with the Honolulu Junk Company.

Q. Now the additional power, or a new power-of-attorney was given to you, was it not, in the year 1941, by Yotaro Fujino? A. What?

Q. A new power-of-attorney was given you on the 20th of February, 1941, was it not, by Yotaro, also known as Yootaro, Fujino? A. Yes.

Q. Being Exhibit "E," and one also given on the 23d of December, 1940, by Chiyono, being Exhibit F? A. Yes.

Q. Now why was it thought necessary to get new powers-of-attorney from the Fujinos at that time; can you tell us?

A. When the property was to be deeded over to Kaname I went to the Bishop National Bank and told them of this deed to be transferred over to

(Testimony of Tokuichi Tsuda.)

Kaname Fujino, and it was then that they had suggested drawing up a new powers of attorney.

Q. Now you said when the property was to be deeded over to Kaname you went to the bank?

A. Yes. [292]

Q. Where did you get any instructions, if you got any, that the property was to be deeded over to Kaname?

A. That instructions came sometime before November, 1940, from Yotaro Fujino, through Seitaro Yamamoto.

Q. How did it come?

A. It was sometime before 1940 when we were asked by Seitaro Yamamoto that he wanted to see Yasuo Tsutsumi and myself, and so we went up to his home, and he told us that he was in receipt of a letter stating that Yotaro Fujino wanted to proceed with the incorporation and that he would give the property to Kaname.

Q. Now approximately when was that?

A. Sometime before November, 1940.

Q. Sometime between November, 1940?

A. Sometime before November, 1940.

Q. Before November, 1940. Well, was it in the year 1940?

A. Yes, if I remember correctly it was sometime between July, 1940, and November, 1940.

Q. Do you know whether or not Robert Murakami went to Japan in the year 1940?

A. Yes, I knew.